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ABSTRACT

This guide was prepared in reply to requests for assistance in drafting state legislation from state legislatures, judges, lawyers, administrators of programs for the prevention and treatment of delinquency and neglect, and from others concerned with the drafting and enactment of legislation on these topics. The suggestions contained in this guide are the result of research and study which included review of state laws, Federal and state judicial decisions, field study of judicial and administrative practices in certain selected states, and discussions with individuals actively engaged in the field of prevention and treatment of delinquency and neglect. The guide attempts to set forth in legislative language certain basic principles regarding the operation of family and juvenile courts and the administration by executive agencies of state and local programs. Special emphases are placed on ways in which children can be diverted from the juvenile justice system consistent with the protection of both the juvenile and the public, and on providing services and facilities in the communities in which the children live. State and local agencies, legislative committees, and state and community planning agencies must determine how best to use these suggested statutory provisions to meet their own requirements, state constitution and legislation already enacted. (Author/RF)

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Model Acts

FOR

FAMILY COURTS

AND

STATE-LOCAL CHILDREN'S PROGRAMS

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development
Office of Youth Development

Washington, D.C. 20201

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STATE-LOCAL CHILDREN'S PROGRAMS

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FOREWORD

This guide was prepared in reply to requests for assistance in drafting State legislation from State legislatures, judges, lawyers, administrators of programs for the prevention and treatment of delinquency and neglect, and from others concerned with the drafting and enactment of legislation on these topics.

This document is a combination and revision of two previously issued documents.

The first is *Legislative Guide for Drafting Family and Juvenile Court Acts* prepared by William H. Sheridan, the Assistant Director of the Division of Juvenile Delinquency Service, Children's Bureau, Social and Rehabilitation Service, Department of Health, Education, and Welfare (Children's Bureau Publication 472-1969). Since that time, the Supreme Court and a number of State appellate courts have handed down a number of decisions having a far-reaching effect upon the latitude of juvenile courts, especially as related to procedural due process. Also, given impetus in part by the Report of the President's Commission calling for a limitation of the jurisdiction of juvenile courts, there has been an increasingly insistent movement for limiting the jurisdiction of the juvenile courts with respect to so-called status cases—acts by juveniles which are not crimes if committed by adults.

The second document is the *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency*, issued by the Youth Development and Delinquency Prevention Administration, Department of Health, Education, and Welfare (DHEW Publication No. (SRS) 72-260:73-26004) and prepared by Herbert W. Beaser, who is a member of the Bars of Massachusetts and the District of Columbia, former Chief Counsel of the Children's Bureau and the U.S. Senate Subcommittee on Juvenile Delinquency, who has participated in the preparation of many of the standards in the field of juvenile delinquency and child welfare.

The objective was to develop a unified, integrated guide for legislative drafting covering both the judicial and administrative aspects of the subject, incorporating the latest thinking by persons knowledgeable in the field related to what many persons believe to be the ultimate objective; namely, the diversion of the greatest number of juveniles from the juvenile justice system consistent with the protection of both the juvenile and/or public safety.

The suggestions contained in this document were made as a result of research and study which included review of State laws, Federal and State judicial decisions, field study of judicial and administrative practices in certain selected States, and discussions with many individuals actively engaged in the field of prevention and treatment of delinquency and neglect.

The hope is that this guide and the suggestions it contains will be of assistance to State and local agencies, legislative committees, State and community planning agencies, and all others interested in improving legislation in this field.

The Office of Youth Development wishes to express its deep appreciation to all those who contributed to the development of this publication through their many thoughtful and helpful suggestions.

JAMES A. HART
Commissioner
Office of Youth Development

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PRINCIPLES UNDERLYING THESE DRAFTING GUIDES

The legislative suggestions contained in this guide, while they are limited in the scope of the subject matters intended to be covered, can be advanced only against a background and within the framework of certain generally accepted social and legal principles applicable not only to certain categorical groups of children but also to all children as well.

Those principles are set forth below, with a brief discussion of each.

1. Parents have the primary responsibility for meeting the many needs of their children and, when necessary, society has an obligation to help them meet such responsibility. When parents are unable or unwilling to fulfill these responsibilities, society must assume them either to protect the community or such children, with due regard to preserving the legal rights both of the children and of their parents.

The young—because of their youth and immaturity—need care, nurture, love and attention. They need also protection and the opportunity for the fullest development of their capacities. Parents have the primary responsibility for meeting these needs but obviously they cannot, alone, meet all of them.

Society must, therefore, help parents by furnishing:

(a) certain resources and services for all children, such as schools, and health services for promoting good health and fostering normal physical and emotional development;

(b) as required, specialized resources and services for children with particular needs, such as diagnostic and remedial services for the sick and for those with physical, mental and emotional handicaps; and

(c) social services, care and financial assistance for those whose parents are unable to meet or carry out their responsibilities.

Society also has a duty to promote conditions that are conducive to the wholesome development of family and child life and that will enable parents to discharge their responsibilities toward their children in a manner which will benefit both their children and their communities.

2. Creation of comprehensive programs for the prevention and treatment of delinquency and neglect is the responsibility of public agencies, acting, whenever possible, in cooperation with voluntary agencies. The services offered through these programs should be universally available and sufficient in quality and quantity to achieve their objectives.

These programs should focus on making available all appropriate services needed by children diverted from the juvenile justice system and to rehabilitate them if they have already been adjudicated delinquent, thereby ensuring their reintegration into their community.

Meeting the needs of these children requires a variety of skills, services and facilities. A united approach of public and voluntary agencies is essential. As both recognize their interrelationship, join their efforts, and reinforce each other, they can, together, achieve effective coordination of services and assure the use of all available services, resources, and facilities for the benefit of these children.

3. State governments are responsible for planning and carrying out comprehensive, statewide programs providing the necessary services, resources, and facilities for the prevention and treatment of delinquency and neglect, or for assuring that such services, resources, and facilities are provided by local government units throughout the State.

The States have responsibility for promoting and protecting the welfare and safety of their people. To this end, the State has authority to plan, establish and carry out necessary services which not only promote the well-being of children and provide safeguards for their protection but also ensure that all persons shall

have equal opportunity to exercise their rights and freedoms and fulfill their obligations in safety, with due regard to the rights, freedoms and safety of others.

Responsibility may be delegated to local government units for providing some of the services, resources and facilities for the prevention and treatment of delinquency and neglect in accordance with policies, regulations and standards promulgated by the State government. However carried out, the State government has the ultimate responsibility and obligation for the maintenance of such a program, whether the State government itself provides all of the services, resources and facilities or whether they are provided in part by local government units or through the appropriate utilization of facilities and services of voluntary agencies.

4. It is essential to enlist the participation of representatives of other public programs, voluntary agencies, and citizens groups, including youth groups, in the planning and development of programs for the prevention and treatment of delinquency and neglect.

The active and meaningful participation in program planning and development by those who represent citizens groups, including youth groups, other public and voluntary programs, especially at the community level, affords them the opportunity to express the hopes, thinking and interests of those most involved and affected by program operations, for interpreting program objectives to them, for taking into account all available resources and facilities, and for arousing and sustaining "grass roots" support for and understanding of what is sought to be attained.

5. Programs for the prevention and treatment of delinquency and neglect should be comprehensive, stemming from three types of responsibility:

(a) establishing and enforcing adequate standards for services and facilities for children who are delinquent, in danger of becoming delinquent, or neglected;

(b) making available services, resources and facilities for such children of a variety, quantity and quality necessary to meet their needs most effectively; and

(c) promoting coordination and cooperation among organizations, agencies and groups in community planning, organization and development of services and facilities.

The services and facilities stemming from these three types of responsibility should include in their objectives both prevention and treatment. Probably no State program, however administered, at present encompasses all of the services and activities provided for in these legislative suggestions. Separately, if not collectively, however, most of their counterparts will be found in varying degrees in present programs of the various States. They are here set forth as representing the elements of what, today, is regarded as a comprehensive and well-rounded program of delinquency prevention and treatment of delinquency and neglect.

6. Public programs for the prevention and treatment of delinquency and neglect may be entirely State administered or partly locally administered. If the latter type, the local units should be vested with as much responsibility as possible and appropriate, the State government making this possible by providing consultation and adequate financial assistance. In addition, to promote quality, uniformity and efficiency of services, local administration should be governed by State promulgated regulations and standards. Subject to differences that exist between State and local governments with respect to jurisdiction, organization and administration, the principles applicable to the State agency should also be applicable to local agencies. Regardless of how administered, services and facilities for the prevention and treatment of delinquency and neglect should, to the greatest extent possible, be community based and close to those they serve and to other auxiliary community services.

In a state-administered program, the law should give responsibility for all duties and functions to a State agency financed by State appropriations. In its administration of the program, the State agency should make provision both for statewide services and facilities and for local services. For the latter, the State agency may establish its own local or district offices, through which it provides these services.

In a partly State and partly locally administered program, the law should give certain direct operating duties and functions to the State agency and others to agencies of local govern-

ment. The law should provide for the State agency to issue policies, regulations and standards binding upon local agencies, in accordance with which the local agencies administer the aspects of the program for which they are responsible. Generally, the unit of local government is at least as large as a county. In some instances it may be a large urban area governmentally independent of the county. Or it may be two or more counties, small in area or population, which combine their resources in a single agency. Both State and local funds should be appropriated for the support of the program.

States with State and locally administered programs vary as to which services are provided by the State agency and which by the local. It also depends on what is appropriate to the function of each agency. For example, in partly State and partly locally administered programs, setting standards for, and licensing child placing and child caring agencies and institutions, and establishing and maintaining treatment facilities for delinquent children have been developed as appropriate State functions; while providing casework, group work and other direct services to children and community planning for their development have seemed to be appropriate local functions.

7. With each State rests the responsibility for determining through what form of administrative organization it can best achieve the goals of a strong and efficient program for the prevention and treatment of delinquency and neglect, make possible the most progressive development of that program, and give that program a clear-cut identity.

No single pattern for the administration of a program of services and facilities for the prevention and treatment of delinquency and neglect—whether State administered or State and locally administered—is applicable to all States. Many States administer all or most services for children in a department of public welfare or human resources. Some States administer certain types of institutions for children, such as the emotionally disturbed, through another agency. Some States have established a separate agency to provide State services and care for delinquent children.

Also, when organizing services within a single State agency, a number of variations are possible. For example; a State department of public welfare administering all child welfare services for which the State is directly responsible might have a separate division of services for delinquents, parallel with a division for other children; or, it might have a single division of services to children with two or more branches, one of which concerns itself with delinquents. A State agency dealing only with delinquent children might have several divisions, organized according to types of services provided. Still other patterns are possible.

The decision by a State as to the type of organization it regards as best for the administration of its prevention and treatment programs involves a consideration of a variety of factors, including:

(a) the administrative pattern of the State and how these services have previously been organized and administered;

(b) the resources available and the stage of development of the program;

(c) most importantly, how the most effective work on behalf of children can be organized and carried out so as to reach all children who are neglected, delinquent, or who are in danger of becoming delinquent with the best quality and the most services and facilities that can be made available without duplication of other programs and in such a way as to reduce negative labelling;

(d) the geographic area of the State and size of the population to be served.

However, it is essential that the administration of the program for the prevention and treatment of delinquency and neglect not be vested in a State agency having duties and functions inconsistent with or incompatible with the objectives of such a program. Thus, for example, it would obviously be self-defeating to provide for the administration of a program of delinquency prevention and treatment by the Attorney General's Office or by the State Police Department. The primary functions of both of these agencies, as well as the training, knowledge and skills which the staffs of both are expected to possess, are—or should be—so exclusively geared to crime detection and criminal prosecution that any suggestion to superimpose upon either of them the highly specialized functions involved in delinquency prevention and treatment should be so evidently incongruous as to be automatically rejected. Likewise, a conflict of

roles also arises when the administration of such a program is placed within the judicial branch of government.

Similarly, there are those who believe it advisable to separate the functions of delinquency prevention from those of treatment, since the objectives, facilities, services, personnel, methods of operation and community involvement of one differ in some respects from the other. Other factors may be the reluctance on the part of youth to seek help from a juvenile justice agency as well as adverse labelling of such children.

8. The imposition, by statute, of duties with respect to the prevention and treatment of delinquency and neglect should carry with it the responsibility for providing sufficient funds to discharge those duties.

Each State should consider carefully the quality and extent of the services that the State and local governments are prepared to support and decide which services and facilities will be "required" and which will be "authorized" and how the program will be financed.

These decisions are crucial and are not lightly to be made.

Nevertheless, they must be made at the time of the enactment of the enabling legislation—not after its enactment. If a State agency is to be required by legislation to perform certain services and to provide certain facilities for an effective program for the prevention and treatment of delinquency and neglect, the legislature must decide that it will dedicate sufficient resources to accomplish that purpose and it must decide that issue at the time it imposes the duty upon the State agency. Otherwise, there will be bitter disappointment on the part of the public because the program objectives have not been met.

The mere issuance of legislative directives—however well phrased—to a State agency to take all necessary steps to prevent and treat delinquency and neglect becomes a snare and a delusion without a simultaneous commitment to dedicate to such a program sufficient State services, facilities, and resources to enable the State agency to carry out effectively such a legislative mandate.

Unfortunately, with respect to programs for the prevention and treatment of delinquency and neglect, that has all too often been the record. Time and again, spurred on by a public aroused from its normal apathy toward the problems of juvenile delinquency in the community, legislation has been enacted which promised much but, because of lack of the necessary dedication of sufficient resources to its implementation, delivered little.

In any event, there are great advantages in statutorily imposed duties for the provision of certain services since, in this manner, all persons similarly in need of the services will have an equal opportunity to have them made available.

The decision as to how and at what levels the various parts of the program are to be financed depends, not only upon existing patterns of financing other State functions, but also upon the relative requirements of other State programs, the financial resources of the State, the stage of program development reached, etc. Involved also is the extent to which the cost of services will be borne directly by the State, by local governments, or by the State through allocations of State funds to local agencies. Consideration should be given to State financial assistance to local government units on a flexible or variable grant basis as a means of raising standards, maintaining the quality and adequacy of care and equalizing opportunity for services throughout the State.

Whatever method of financing the State decides upon, it cannot be too greatly emphasized that the funds provided should be sufficient to discharge adequately and fully the duties and functions required by law to be provided by the agency or agencies administering the program. This is particularly true of services and care for children whose legal custody has been removed from their parents by a court, or to provide services for children on a voluntary basis, on the ground that they need treatment which the parents cannot give.

9. All public services for the prevention and treatment of delinquency should be coordinated, regardless of the organizational structure through which they are provided.

Whether the services are administered by a single State agency or by more than one agency, there should be coordination and cooperation to keep the focus on program objectives, to provide for continuity of service and accountability, as the needs of particular children change, without frequent shifts from one agency to another, to

give recognition to social needs common to all children, and to avoid duplication or overlapping and to assure maximum use of services, facilities and resources.

When one agency is responsible for most of the program, this coordination may be achieved through administrative devices; when several agencies are responsible for the different parts of the program, it must be achieved through clearly defined cooperative relationships and coordinating mechanisms.

10. Public services for the prevention and treatment of delinquency and neglect should be closely associated with other public services designed to help individuals and families with their economic, personal, family or community problems.

Maintenance of such relationships and cooperation promotes the most effective functioning of each program. These other public programs include many related services, such as family and general child welfare services and public assistance—especially aid to families with dependent children. They also include programs providing other services for the well-being of individuals and families such as health services, including mental health, vocational rehabilitation, education, housing, social insurance, training and employment services.

11. Public services for the prevention and treatment of delinquency and neglect should be available equally throughout the State to all who require such services.

Services should be made available to children without regard to social, ethnic, racial or religious status or affiliation or sex and without regard to duration of residence in the State or governmental unit.

12. Public services for the prevention and treatment of delinquency and neglect should always have regard for the relationship between parents and child and for safeguarding the legal rights of the child and those of his parents.

In providing these services, there should be recognition of the parent-child relationship and of the importance of preserving its positive values whenever possible, whether or not the child is living with his parents.

Although a public agency may not provide services and care for a child without the consent of his parent or legal guardian except upon court order or upon a request authorized by law, the agency should make known its services and, when appropriate, afford the child or the parent or guardian an opportunity to avail themselves of such services voluntarily.

13. When a legal custodian is appointed for a child, the legal custodian—whether an individual or an agency—should have the statutory authority, consistent with the legal rights of the child and of his parents, and with the authority of the court, necessary to determine and carry out the treatment that will best meet the needs of such child.

Successful treatment necessitates that the legal custodian of a child have authority to make a variety of major and minor treatment decisions. However, such decisions cannot be made if they are contrary to the legal rights of the child or of his parent, or abrogate, remove, change, or in any way limit the legal status of the child with respect to his parent or legal guardian without resorting to legal process. If the legal custodian finds that the child does not have a natural or adoptive parent in a position to exercise effective guardianship or a legal guardian, the legal custodian should petition the appropriate court for the appointment of an individual as a guardian of the person of such child. The authority given the legal custodian by law with respect to a child should be designed, therefore, to avoid either disregarding the rights of the child or of his parents or so circumscribing the actions of the legal custodian that any necessary treatment program will be seriously disrupted.

The legal custodian of a child should make periodic reexamination and reevaluation in the case of each child, for neither the legal right of a parent to the legal custody of a child nor the right of the child to live in his own home should be taken away for longer than is necessary. Major treatment decisions should be subject to court review upon the petition of the child or of his parents or legal guardian; other decisions designed to implement a major treatment decision, but involving no treatment inconsistent with it, should not be subject to such review. In all such appeals to the court, the child should be entitled to legal counsel.

14. Parents and others legally responsible for children should be required, insofar as they are able, to discharge their legal and financial obligations for them.

15. Research, including program evaluation, is essential to the development of a forward moving program of services for the prevention and treatment of delinquency and neglect as is the periodic reexamination of the program's progress toward achieving the objectives of such program.

Research, well planned and conducted, has a significant role in the development of public, as well as voluntary, services for the prevention and treatment of delinquency and neglect. Through it the social needs of children and of communities can be identified and factual bases established and methodology defined for constructive State and local planning and action. The extent to which public, as well as voluntary, agencies provide opportunities to qualified staff to undertake original research and studies in this field and the related social and biological sciences and to report their findings will be an important factor in determining future progress in improving practices and in developing new ways of meeting the needs of children who are delinquent, in danger of becoming delinquent, or neglected.

16. Personnel for providing services for the prevention and treatment of delinquency or neglect should be qualified by personality, training and experience, be selected on a merit basis, and have the conditions of their employment safeguarded. The agency or agencies responsible for the program should make provision for staff training and development.

The quality of the services that are ultimately effective in the prevention and treatment of delinquency or neglect depends upon the individuals who carry out the program. The comprehensive nature of the services requires staff with many kinds of specialization, including social workers and specialists in other fields such as psychiatry, psychology, education, sociology, and public information and interpretation. Also required will be a variety of para-professionals, indigenous workers and volunteers. All of these should have appropriate training. The great shortage of qualified personnel in these fields, as well as the need for all staff continually to improve and add to their knowledge and skill and to develop their potentialities, makes it imperative that an agency administering the services carry on a program for the careful selection of staff and for their professional development, including full academic education and in-service training. Such a program assures staff opportunities for continuing acquisition of new technical knowledge and for increasing their ability to use and develop new methods of work and new skills. The same is true with respect to para-professionals, volunteers, and indigenous workers.

HOW TO USE THESE DRAFTING GUIDES

In the materials which follow, an attempt has been made to set forth in legislative language certain basic principles regarding the operation of family and juvenile courts and the administration by executive agencies of State and local programs for the prevention and treatment of delinquency.

The materials are designed to reflect many concepts which, to date, have found acceptance as desirable for inclusion in State legislation dealing with these matters. Such concepts include those contained in the *Legislative Guide for Drafting Family and Juvenile Court Acts*, prepared by William H. Sheridan and issued in 1969 by the Department of Health, Education, and Welfare (Children's Bureau Publication 472-1969) and *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency*, prepared by Herbert Wilton Beaser and William H. Sheridan and issued in 1972 by the Department of Health, Education, and Welfare (SRS Publication 72-260; 73-26004).

In addition, they incorporate into suggested legislative language some recent concepts which have evolved either as a result of judicial decisions or of changed conditions. Special attention has been paid to suggestions as to ways in which children can be diverted from the juvenile justice system with due regard to the safety of the community and the protection of individual rights.

It will also be noted, in line with current thinking, that special emphasis is placed on providing services and facilities in the communities in which the children live.

Each State using these materials must determine for itself how best to use these suggestions in order to meet its own requirements.

Also, each State will need to adapt the language of the suggested statutory provisions to its own State constitution and the relevant legislation already enacted. No law relating to the functioning of the family and juvenile court or the provision of services for the prevention and treatment of juvenile delinquency or neglect stands alone. Other closely related statutes are those which require or authorize the performance of certain duties and functions in the total field of child welfare services. Among such laws are those dealing with the police, the regulation of child placing activities, the licensing of foster homes and child caring and placing agencies, guardianship, adoption, termination of parental rights and duties, etc.

These materials do not generally attempt to include drafting suggestions with respect to the relative roles of the State and local units in the financing of locally administered programs.

CAUTION: These materials are not intended to be copied as a totality, without modification, to form a comprehensive package for enactment in order to provide for complete programs with respect to the subject matters covered in this guide. They must be adapted to the legislative needs of each State.

CAUTION: Many of the sections of the suggested legislative language in these materials are interrelated. A change in the wording of one section may require a change in another section either in PART I or in PART II. Although some sections or subsections might lend themselves to use out of context, others, if not used with the inclusion of certain interrelated sections, might lead to serious confusion or conflict.

PART I
FAMILY COURT ACT

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SECTION 1. PURPOSE

This (act) shall be interpreted and construed so as to effectuate the following purposes:

(1) To divert from the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through community-based alternative programs;

(2) To provide non-criminal judicial procedures through which the provisions of this (act) are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced; and

(3) To separate a child from such child's parents only when necessary for the child's welfare or in the interests of public safety.

COMMENTS

This section differs from the usual purpose clause in that it adds two new dimensions:

(1) to divert children from the juvenile justice system to the extent possible, consistent with the protection of the public interest; and

(2) the establishment of non-criminal judicial procedures designed to assure the fulfillment of the requirements of due process of law and the protection of the constitutional rights of all the parties to the proceedings.

Society has the right and the duty to protect itself against those acts of its members harmful to the other members of that society. The court is the instrument used by society to protect and enforce that right. The consequences of such acts, however, should result in individualized treatment authorized through the ordinary process of law.

This process must conform to certain generally accepted principles designed to assure compliance with the requirements of due process of law as guaranteed by the Constitution of the United States.

These include:

(1) The conditions under which the State is empowered to intervene in the upbringing of a child should be specifically and clearly delineated in the applicable State statutes. Whenever the State seeks to intervene, it should be required to show affirmatively and not by inference that the required conditions justifying the State's intervention do in fact exist with respect to such child and that the State's intervention is necessary to protect the interests of the child or of the community, or both. The State should not be able to interfere with the rights of the parents with respect to their child and assume jurisdiction over such child on the generalized, unproven assumption that the child is in need of the care or protection of the State or merely because the State disagrees with the parent as to the best course to pursue in rearing the child. Nor should the State be authorized to take children from their parents merely because, in the estimation of officials of public or private welfare agencies, probation officers or the courts, the children can be better provided for and more wisely trained as wards of the court.

(2) Both the child and child's parents are entitled to know, in advance, the bases on which the State seeks to intervene and on which it predicates its plan for the care and treatment of the child. They are equally entitled to rebut such bases both directly by questioning witnesses and indirectly by presenting facts to the contrary. This means that rules of evidence calculated to assure proceedings in accordance with due process of law are applicable to children's cases. There should be an orderly presentation of credible facts in a manner calculated to protect the rights of all concerned. This principle also entails written findings of facts, an adequate record of the hearing and proceedings, the right to counsel, and the right to appeal to an appellate court having the requisite jurisdiction to hear and decide such appeals. The court should give clear and meaningful reasons for its decisions as to its findings with respect to allegations made and any order made by the court with respect to and affecting the rights of the parents and the rights and status of the child.

(3) The statute establishing the jurisdiction of the court should limit the court as to the type of disposition it may make, depending on the nature of the case, rather than allowing the court unlimited discretion within the range of the specific dispositions authorized.

(4) Certain procedural safeguards must be established for the protection of the rights both of the parents and their children.

Although the parties of these proceedings may, as a matter of practice, not always make

use of such safeguards, their availability is nevertheless important. Equally important is the necessity of informing the parties of the availability of such safeguards, whether or not they take advantage of them.

These safeguards are required by the constitutionally guaranteed right to due process of law and are important not only for the protection of the constitutional rights of the parties involved but also to help insure that the decisions affecting social planning for children are based upon sound legal procedures and will not be overturned at a later date on the basis that the fundamental constitutional rights of the parties were denied.

In accord with current thought, a provision has been included in this section giving the court the specific obligation to take affirmative action to divert children from the juvenile justice system whenever such action is consonant with the protection of the community and the welfare of the child involved.

This recommendation is also in accord with the recommendations of the Report of the President's Commission on Law Enforcement and the Administration of Justice entitled *The Challenge of Crime in a Free Society*, which stated, *inter alia*, "The movement for narrowing the juvenile court's jurisdiction should be continued."[1]

For a more detailed exposition of this recommendation, also see Task Force Report: *Juvenile Delinquency and Youth Crime*, President's Commission on Law Enforcement and Administration of Justice.[2]

It is not the purpose of this (act) to authorize or mandate a program of care or treatment of children found to be neglected or delinquent. Such provisions are more appropriately contained in legislation establishing such programs in the executive branch of government at the State or local levels.[3]

The word (act) is placed in parentheses throughout since the suggested language may be part of a complete act or part of amendments to existing legislation.

SECTION 2. DEFINITIONS

As used in this (act):

(1) "adult" means an individual 18 years of age or older;

(2) "aftercare supervision" means a legal status created by a court order after revesting legal custody of a child in the child's parent and permitting the child to return to his home subject to supervision and return to the court at any time during the period of supervision in situations where, previously, following an adjudication of delinquency or neglect, the child's parent had been deprived of the child's legal custody and the child had been removed from his home;

(3) "child" means an individual under the age of 18 years;

(4) "commit" means to transfer legal and physical custody;

(5) "consent decree" means a decree, entered after the filing of a delinquency petition and before the entry of an adjudication order, suspending the proceedings and continuing the care of the child under supervision in the child's own home, under terms and conditions agreed to by all the parties concerned;

(6) "court" means the family division of the ( )[4] as herein established;

(7) "delinquent act" means an act designated a crime under the law of this State, or of another State if the act occurred in another State, or under Federal law. Traffic offenses shall not be considered delinquent acts except for violations of ( );[5]

(8) "delinquent child" means a child who has committed a delinquent act and is in need of care or rehabilitation;

(9) "department" means the (insert name of the State Department charged with the responsibility of providing services for the prevention and treatment of delinquency and neglect);

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[1] Report of the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, p. 85 (1967).

[2] Task Force Report: *Juvenile Delinquency and Youth Crime*: Report on Juvenile Justice; President's Commission on Law Enforcement and Administration of Justice, pps. 398 et seq. (1967).

[3] *Model Acts for Family Courts and State and Local Programs*, PART II, *infra*, hereafter referred to as "PART II."

[4] Insert name of highest court of general trial jurisdiction.

[5] Set forth the sections of State statutes, violations of which are likely to need the specialized handling of the juvenile court, such as the so-called negligent homicide statute sometimes appearing in traffic codes, driving while under the influence of liquor or narcotics, driving without or during suspension of a driver's license, and the like.

(10) "detention care" means the temporary care of delinquent children or children alleged to be delinquent in secure custody pending court disposition or transfer to a residential child-caring facility;

(11) "Division of Preventive Services" means the division in the department responsible for administering the department's program for the prevention and treatment of neglected children.

(12) "Division of Treatment Services" means the division in the department responsible for administering the department's program for the treatment of delinquent children;

(13) "guardianship of the person of a child" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and to be concerned about his general welfare. It shall include but shall not necessarily be limited in either number or kind to:

(i) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric and surgical treatment; to represent the child in legal actions; to make other decisions of substantial legal significance concerning the child;

(ii) the authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(iii) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency or institution;

(iv) the authority to consent to the adoption of the child and to make any other decision concerning him which his parents could make, when the rights of his parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate adoption, or when both of his legal parents are deceased;

(14) "intake office" means the office by that name in the probation service in the Division of Treatment Services in the department;

(15) "judge" means judge of the family division of the ( );[4]

(16) "law enforcement officer" means any person, however denominated, i.e., constable, sheriff or police officer, who is authorized by the law to exercise the police powers of the State or local governments;

(17) "legal custodian" means a person, other than a parent or legal guardian, to whom legal custody of the child has been given by court;

(18) "legal custody" means a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom he shall live within the State, and the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court;

(19) "neglected child" means a child:

(i) who has been abandoned by his parents, guardian, or other custodian;

(ii) who is physically abused by his parents, guardian or other custodian or who is without proper parental care and control necessary for his well-being because of the faults or habits of his parents, guardian, or other custodian or their neglect or refusal, when able to do so, to provide them; or

(iii) whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child; or

(iv) who has been placed for care or adoption in violation of law; and

(v) in any of the foregoing is in need of care or supervision.

(20) "Office of Prevention and Treatment" means the office in the department responsible for the department's program for the prevention and treatment of neglected children;

(21) "probation" means a legal status created by court order following an adjudication of delinquency whereby a child is permitted to remain in his home subject to supervision and return to the court for violation of probation at any time during the period of probation;

(22) "probation services" means those services provided the court by the Division of Treatment Services in the department, which include making preliminary investigations, predisposition studies, reports and recommendations, to the court, receiving and examining complaints, making referrals to the community

agencies, supervising children placed on probation, and performing all other functions required by this (act) or any other law.

(23) "prosecuting official" means the appropriate public official legally appointed and qualified and authorized by law to act as trial or appellate attorney for and on behalf of the people of a particular geographical area or of the State as a whole in legal actions brought on their behalf pursuant to the provisions of this (act).

(24) "protective supervision" means a legal status created by court order following an adjudication of neglect whereby a child is permitted to remain in his home subject to supervision, and to return to the court for violation of protective supervision at any time during the period of protective supervision;

(25) "residential child-caring facility" means a dwelling, other than a detention or shelter care facility, providing living accommodations, care, treatment and maintenance for children, including institutions, foster family homes, group homes, halfway houses, forestry camps, and, where not operated by a public agency, is licensed or approved to provide care.

(26) "residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not necessarily limited to the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support;

(27) "shelter care" means the temporary care of children in physically unrestricting facilities pending court disposition;

(28) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this (act).

COMMENTS

The definitions in this section are specific, yet they are more comprehensive than most sections on definitions. The purpose is not only to clarify the (act) but also to clarify the rights, duties and functions of the court, of agencies, and of the parent and child. In most States, at the present time, these terms are seldom defined with preciseness in the law. Therefore, many of these terms often have a different meaning to various parties involved even within the same jurisdiction—a factor which has caused conflict and confusion. A number of States already include these definitions in whole or in part. Through such use, a common definition can be developed which will facilitate communication and understanding.

The term "dependent" is not used to describe a child. It is believed that the financial ability of parents to care for their children should not be a factor in removing them from their home. Public assistance should be available to meet this need, eligibility to be determined by an executive agency not by a court.

Jurisdiction by the court over ordinary traffic violations has also been eliminated. For a variety of reasons, it is believed that such jurisdiction should be placed in the ordinary traffic court. This trend has been reflected in legislation enacted in recent years. The more serious traffic cases are still retained within the jurisdiction of the juvenile court in order that the court's expertise and facilities can be utilized.

It should be pointed out that before a child can be found to be delinquent or neglected a second finding is necessary—that the child needs care or rehabilitation.

Status cases

It will be noted that the jurisdiction of the court over the category of cases often denominated "person in need of supervision" has been eliminated. These cases usually include children who are habitually truant from school, or who habitually disobey their parents, or are ungovernable and beyond their control, children who run away or who commit offenses applicable only to children.

In common usage, these types of cases have come to be known as juvenile status offenders—children who are brought within the jurisdiction of the court for having committed actions which are illegal only for juveniles.

It is obvious that such actions on the part of the child, while they may be indicative of the imperative need of the child to receive some type of care or treatment, do not necessarily pose a threat to society. They, therefore, will represent the bulk of the cases which can safely be diverted from the juvenile justice system, i.e., referred, prior to the filing of a petition, for

service or care to a community agency which is not part of the juvenile justice system.

Even in such situations, there will be cases in which an agreement for care and service cannot be achieved, thus necessitating referral to court. In this section, the traditional definition of neglect has been somewhat broadened by adding a child "whose parents, guardian, or other custodian are unable to discharge their responsibilities to and for the child." This provision alleges a condition or status but does not require a finding of fault on the part of any individual or social institution.

Under this provision, the court will still retain sufficient authority over the situation to see to it that remedial measures are taken in a timely and effective manner without labelling the child as a truant, a runaway, or incorrigible. Generally, it can be said that such conduct is self-evident of the failure or neglect, on the part of one or more of our social institutions, whether it be the family, the schools, or other societal conditions having a negative impact upon the child.

If the suggestions made in this section are followed, it should be noted that revisions will be necessary in many other statutes which deal with acts declared to be violations of the law if performed by children but which are not declared to be violations of the law if committed by adults, i.e., curfew violations, truancy, drinking, etc.

Those laws should be specifically amended to provide that the remedy for such violations will be the filing of a petition alleging the child to be neglected. Such behavior could then be considered by the court to be prima facie evidence of a condition of neglect.

Resort to court action to supply the remedial measures needed by such children should be taken only as a last resort and then only where the authority of the court is necessary to accomplish a specific legal objective, i.e., to effect a change in the legal status of the child such as the transfer of "legal custody" or guardianship of the person of the child or placing the child under protective supervision.

Since almost 40% of all cases handled by the juvenile courts are status cases and since almost 60% of all cases are handled nonjudicially (without petition)—in other words, without the use of the court's authority—it is logical to assume that with more intensive screening over 60% of the cases currently referred to courts could safely be referred to an alternative service outside the juvenile justice system.

If the bulk of this very sizeable number of children is to be diverted from the juvenile justice system to non-justice agencies, it is obvious that such agencies—State and local, public and private—must be mobilized and equipped, both as to personnel and funds, to provide the services needed by these children.

The State and local public agencies should by law be required to provide, or arrange to have provided, with the consent of the child and the child's parents, guardian or other legal custodian, such social, health or education services, including care outside of the house as may be required. Where consent is not forthcoming, the agency would have to petition the court for appointment as legal custodian on the basis of neglect.[6]

SECTION 3. THE FAMILY COURT DIVISION

The family court shall be a division of ( ).[7]

COMMENT

No attempt is made to provide for a specific organizational pattern for the court since State judicial systems differ from State to State. The family court should be a division of the highest court of general trial jurisdiction since an integrated court system is preferred rather than a proliferation of specialized courts. The establishment of the court at this level is also desirable since it is more likely to attract individuals of high judicial caliber and command the respect of the bar and the community.[8]

SECTION 4. REFEREES

(a) The ( )[9] may appoint one or more persons to serve as referees on a full- or

[6]For suggested legislative language authorizing State and local services for this category of cases, see PART II, *infra*.

[7]Insert name of highest court of record of general trial jurisdiction.

[8]See: "Standards Relating to Court Organization," American Bar Association Commission on Standards of Judicial Administration, American Bar Association, 1973, Sec. 1.10, p. 2 et seq.

[9]Insert title of chief judge of court of highest general trial jurisdiction.

part-time basis. They shall be members in good standing of the bar of this State. Their compensation shall be fixed by the ( )[9] with the approval of the ( )[10] and paid out of the general revenue funds of the ( ).[11]

(b) Delinquency and neglect hearings shall be conducted only by a judge, if:

(1) the allegations set forth in the neglect or delinquency petition are denied;

(2) the hearing is one to determine whether a case shall be transferred for criminal prosecution as provided in Section 31; or

(3) a party objects to the hearing being held by a referee.

Otherwise, the ( )[9] may direct that hearings in any case or class of cases shall be conducted in the first instance by a referee in the manner provided for by this (act).

(c) Upon the conclusion of a hearing before a referee, he shall transmit his findings and recommendations for disposition in writing to the judge. Prompt written notice of the findings and recommendations together with copies thereof shall be given to the parties to the proceeding. The written notice shall also inform them of the right to a rehearing before the judge.

(d) A rehearing may be ordered by the judge at any time and shall be ordered if any party files a written request therefor within 3 days after receipt of the referee's written notice. If a hearing de novo is not requested by any party or ordered by the court, the hearing shall be upon the same evidence heard by the referee, provided that new evidence may be admitted in the discretion of the judge.

(e) If a hearing before the judge is not requested or ordered, or the right thereto is waived, the findings and recommendation of the referee, when confirmed by an order of the judge, shall become the decree of the court.

COMMENT

It is not intended that referees be used as substitutes where additional judges are needed. However, they serve a purpose where the judicial load is too great for one judge but not great enough for two judges. Also, their use on a part-time basis in large circuits may facilitate the administration of juvenile justice. As judicial officers, they should be members of the bar. They should not carry any probation duties—supervisory or otherwise—since this could create a conflict of interest in discharging the duties of a referee in cases where they were active in another capacity.

SECTION 5. PROBATION AND OTHER CASEWORK SERVICES

Probation and other casework, clinical and related and supporting services shall be provided to the court by the department pursuant to the provisions of ( )[12] the cost thereof to be paid out of the general funds of the State as appropriated to the department pursuant to the provisions of ( )[12] for such purposes.

COMMENT

It is strongly recommended that probation services be established on a statewide basis, administered by an agency which is part of the executive branch of government. Continuity of responsibility and treatment is attained when service and care for delinquent children are in a single agency. Such a system also will provide continuity of administration and will promote a more equitable distribution of services in terms of both quality and quantity, as well as uniformity of procedure. These characteristics are currently lacking in most States because the localities have responsibility for the services and they are often not in a position to provide them adequately.

Administration of probation services by the executive branch of government will help to clarify the role of the probation officer as a professional without prosecutorial functions or subject to judicial control. Also, for legal as well as ethical reasons, the duties of the judge should not involve the administration of the probation

[10] Insert appropriate budgetary authority.

[11] Insert appropriate source of funds.

[12] Insert statutory reference to statutes establishing State agency responsible for the administration of State services for neglected and delinquent children. For suggested legislative language, see PART II, *infra*.

services, the detention home, other foster care facilities or other casework or clinical services necessary for study or treatment. The judicial branch of government is often called upon to check or pass upon the legality of the actions of the executive or administrative system. This calls for an independent and impartial judiciary. When the judge is also the administrator, this is not possible since he is placed in the position of judging his own actions. This does not mean that the agency serving the court should operate completely independent of the judiciary. An effective working relationship must be established. Provision for the involvement of the judiciary in the development of policy and probation practice procedures should be made. This could be accomplished through the use of a policy advisory committee which would include judges as well as representatives of the behavioral sciences. Individual judges should also have a role in the selection of staff assigned to their particular court.

For further discussion of the administration of probation services, see: "New Directions for the Juvenile Court," by William H. Sheridan in *Federal Probation*, June 1967, p. 15; "Structuring Services for Delinquent Children and Youth," by William H. Sheridan, in *Federal Probation*, September 1967, p. 51; "Unraveling Administrative Organization of State Juvenile Services," by Maurice A. Harmon, in *Crime and Delinquency*, July 1967, p. 433; and "Juvenile Delinquency and Youth Crime," a Task Force Report of the President's Commission on Law Enforcement and Administration of Justice, 1967, pps. 85-90.

SECTION 6. POWERS AND DUTIES OF PROBATION OFFICERS AND SOCIAL SERVICES PERSONNEL

(a) For the purpose of carrying out the objectives and provisions of this (act), and subject to the limitations of this (act), probation and social services personnel shall have the power and duty to:

(1) receive and examine complaints and allegations that a child is neglected or delinquent for the purpose of considering the commencement of proceedings under this (act);

(2) make appropriate referrals of cases to other private or public agencies of the community where their assistance appears to be needed or desirable;

(3) make predisposition studies and submit reports and recommendations to the court as required by this (act);

(4) supervise and assist a child placed on probation or under supervision by order of the court; and

(5) perform such other functions as are designated by this (act) or by rules of court pursuant thereto.

(b) for the purposes of this (act), a probation officer or social service worker, with the approval of the court, shall have the power to take into custody and place in shelter or detention care a child who is under his supervision as a delinquent or neglected child when the probation officer or social service worker has reasonable cause to believe that the child has violated the conditions of his probation, or terms of protective supervision, or that he may flee from the jurisdiction of the court. A probation officer does not have the powers of a law enforcement officer nor may he sign a petition under this (act) with respect to a person who is not on probation or otherwise under his supervision.

(c) If a probation officer takes a child into custody, he shall proceed as provided for in sections 21, 23 and 39 of this (act).

COMMENT

This section is included not only to provide for the authority of the department but also to clarify the role of such services. The probation officer should not have broad law enforcement powers, nor should he take on prosecutorial functions. His authority to initiate court action should be specifically limited to children already on probation or otherwise under his supervision. He should not be given functions which are in conflict with each other (see "Gault Decision and Probation Services," by William H. Sheridan, 43 *Indiana Law Journal* 656, 1968).

SECTION 7. JURISDICTION—CHILDREN

(a) The court shall have exclusive original jurisdiction of the following proceedings, which shall be governed by the provisions of this (act):

(1) proceedings in which a child is alleged to be delinquent or neglected.

(b) The court shall also have exclusive original jurisdiction of the following proceedings, which shall be governed by the laws relating thereto without regard to the other provisions of this (act):

(1) the termination of parental rights;

(2) proceedings for the adoption of an individual of any age;

(3) proceedings under the Interstate Compact on Juveniles;

(4) proceedings under the Interstate Compact on the Placement of Children;

(5) proceedings to determine the custody or to appoint a legal custodian or a guardian of the person of a child; and

(6) proceedings for the commitment of a mentally retarded or mentally ill child.

COMMENT

The jurisdiction of juvenile and family courts varies from State to State. This section, when coupled with subsection (a) of Section 10, provides the recommended basic jurisdiction of the juvenile court. When coupled with all of Section 10, it provides for the basic jurisdiction of a family court. Proceedings for the granting of judicial consent to marriage and enlistment in the armed forces are omitted as this should be the function of the guardian. Where no effective guardianship of the person exists, a guardian should be appointed.

SECTION 8. TRANSFER FROM OTHER COURTS

(a) If it appears to a court that a defendant was under the age of 18 years at the time of the alleged offense, the court shall, with the consent of the defendant, forthwith transfer the case, together with all papers and documents connected therewith, to the family court. All action taken by the court prior to transfer of the case shall be considered null and void unless the family court transfers under Section 31. If the defendant refuses to consent, the court shall proceed with the trial.

(b) If at the time of the alleged offense the defendant charged was under the age of 18 years but this fact is not discovered by the court until after entry of a judgment of conviction and order of sentence, the court may elect to retain jurisdiction and permit the conviction and sentence to stand or dispose of the case as provided for in Section 34.

COMMENT

This section, with the exception of subsection (b), is fairly common. Subsection (b) is included in order to discourage deception with respect to age. This will usually involve youth who are in their 17th or 18th year and is intended to prevent delay of adjudication and disposition. It permits flexibility in that the court has two options: sentence the youth as an adult or exercise the powers of the family court and dispose of the case as provided for in this (act). The consent of the defendant is required under Subsection (a) in order to avoid any question of double jeopardy.

SECTION 9. RETENTION OF JURISDICTION

(a) For the purposes of this (act), jurisdiction obtained by the court in the case of a child shall be retained by it until the child becomes 19 years of age, unless terminated prior thereto. This section does not affect the jurisdiction of other courts over offenses committed by the child after such child reaches the age of 18 years.

(b) If a defendant already under jurisdiction of the court is convicted in a criminal court of a crime committed after the age of 18, the conviction shall terminate the jurisdiction of the family court.

SECTION 10. JURISDICTION—ADULTS

The court shall have exclusive original jurisdiction:

(a) To try any offense committed against a child by the child's parent, guardian, or any other adult having the legal or physical custody of such child.

(b) To try any adult charged with:

(1) deserting, abandoning, or failing to provide support for any person in violation of law;

(2) an offense committed by one spouse against the other.

In any case within this section, the court in its discretion may transfer the proceedings to a

court which has criminal jurisdiction of the offense charged.

(c) In proceedings for support, alimony, divorce, separation and annulment, and to establish paternity of a child born out of wedlock.

(d) In proceedings under the Uniform Reciprocal Enforcement of Support Act.

(e) In proceedings to commit an adult found to be mentally retarded or mentally ill.

SECTION 11. VENUE

Proceedings with respect to children under this (act) shall:

(a) if delinquency is alleged, be commenced in the county where the acts constituting the alleged delinquency occurred or they may, with the consent of the child, be commenced in the county where the child resides;

(b) if neglect is alleged, be commenced in the county where the child resides or in the county where the child is present when the proceedings are commenced.

SECTION 12. TRANSFER TO ANOTHER FAMILY COURT WITHIN THE STATE

If the child resides in a county of the State and the proceeding is commenced in a court of another county, that court, on its own motion or a motion of a party made at any time prior to final disposition, may transfer the proceeding to the county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding shall be so transferred if the child has been adjudicated delinquent and other proceedings involving the child are pending in the family court of the county of his residence. Certified copies of all legal and social records pertaining to the case shall accompany the transfer.

SECTION13. PETITION–PRELIMINARY INQUIRY–AUTHORIZATION TO FILE

(a) Complaints alleging delinquency or neglect shall be referred to the Intake Office. The Intake Office shall conduct a preliminary inquiry to determine whether the best interests of the child or of the public require that a petition be filed. If judicial action appears necessary, the Intake Office may recommend the filing of a petition, provided, however, that all petitions shall be prepared and countersigned by the prosecutor before they are filed with the court. Decisions of the prosecutor on whether to file a petition shall be final.

(b) If the Intake Office refuses to authorize a petition, the complainant shall be notified by the Intake Office of the complainant's right to review of the complaint by the prosecutor. The prosecutor, upon request of the complainant, shall review the facts presented by the complainant and after consultation with the Intake Office shall authorize, countersign, and file the petition with the court when he believes such action is necessary to protect the community or interests of the child.

(c) When a child is in detention or shelter care and the filing of a petition is not approved by the prosecutor, the child shall be immediately released.

(d) If a petition is not filed within the time limits provided for in Section 23, the Intake Office of probation services is authorized to refer the case to an appropriate public or private agency and to conduct conferences for that purpose. During such conferences, a party may not be compelled to appear, to produce any papers, or to visit any place. Such authorization shall not extend for a period beyond 10 days from the date the complaint was made.

COMMENT

This section requires that a preliminary inquiry be made by the probation services in delinquency or neglect cases. It also requires that all petitions be countersigned and filed by the appropriate prosecuting official in the jurisdiction. This is necessary for several reasons. First, he is the person with the expertise concerning the legal sufficiency of the petition. Secondly, under Section 14, he is also the person responsible for conducting the proceeding and for representing the State. It is not the intention, however, to limit the prosecuting official's review to the legal sufficiency of the complaint. He should also be concerned with the need to protect the child and the community. Studies have shown that the highly therapeutic

approach of some intake personnel has resulted in the filing of petitions merely on the basis that the child needed service—service which could be provided by community agencies without court intervention. On the other hand, studies have also shown that petitions were not permitted to be filed in cases of serious offenses where there was reason to believe that court action was necessary to protect the community.

The role of the prosecuting official, as provided in this section, is also necessary since it relieves the judge of the prosecutorial function, which conflicts with his role as an impartial arbitrator. In the absence of a prosecutor to conduct the case, the probation officer is often cast in this role, which conflicts with his role in assisting the court to arrive at a disposition which is in the interest of the child.

The section also provides for a check on the probation services in that the complainant can appeal to the prosecuting official for a review of intake's decision when authorization of a petition is denied. The appropriate prosecuting official may, after a review of the case, prepare the petition, countersign, and file it with the court when he believes such action is necessary to protect the community or the interests of the child.

This (act) does not include a section on informal disposition in terms of a continuing service. This section does permit disposition at the point of intake after conferences, or referral to other community agencies. It also provides that although a petition is not filed within the time required in Section 23, intake is authorized to continue service for a period of 10 days from the time the complaint was received. This is included in order to expedite the intake process as well as to discourage the use of so-called unofficial probation and other services of a continuing nature without properly invoking the jurisdiction of the court. Such services can be provided, however, without a finding by a consent decree pursuant to Section 33.

The preliminary inquiry required by this section is essentially a screening process which must be expeditiously carried out since Section 23 imposes time limits for filing: 24 hours, including Saturdays, Sundays and holidays, for a child who has been detained in either shelter or detention care; and 72 hours, Saturdays, Sundays and holidays not included, for a child who has not been detained.

The preliminary inquiry should not be confused with the indepth study and diagnosis required by Section 30. The preliminary inquiry is essentially an office process since the necessary information should be readily available through office or telephone inquiries, usually involving the following: police or other complainant, child, child's attorney, prosecutor, as well as representatives of any actively involved community agency.

Basic information necessary to determine whether a petition should be filed would ordinarily include the following: the nature of the offense or conduct; age of the child; time the offense took place; past court record or contacts with the child or family; past contacts with police; reports of any agencies active on the case; and, attitude of the child and his parents towards the situation.

Situations where it has been found necessary to detain the child would almost invariably require the filing of a petition. On the other hand, where a petition has been filed and further study indicated the filing was premature, the matter can be rectified through dismissal and referral to a community agency if appropriate.

For a more detailed discussion of court intake procedures, see *Intake Screening Guides: Improving Justice for Juveniles.*

SECTION 14. PETITION—WHO MAY SIGN—CONTENT

(a) Except as provided in Section 6, a petition alleging that a child is a delinquent and a petition seeking the revocation of an order placing a child on probation may be signed by any person who has knowledge of the facts alleged and believes that they are true.

(b) A petition alleging that a child is neglected may be signed only by one of the following persons who has knowledge of the facts and believes them to be true—a representative of (1) a public or private agency providing care or social services to children and families, (2) a hospital, or (3) a mental health agency.

(c) The prosecutor shall represent the petitioner in all proceedings where the petition alleges delinquency or neglect.

(d) Petitions shall be entitled, "In the Matter of _____ , a child" and shall be verified by the person who signs it.

(e) Petitions shall set forth with specificity:

(1) the facts which bring the child within the provisions of subsection (a)(1) of Section 7 and allege that the child is in need of supervision, care, or rehabilitation;

(2) the name, birth date, and residence address of the child;

(3) the names and residence addresses of the child's parents, guardian, or custodian, and spouse if any. If neither of his parents, guardian or custodian resides or can be found within the State, or if their residence addresses are unknown, the name of any known adult relative residing within the State, or, if there be none, the known adult relative residing nearest to the court.

(4) whether the child is in custody, and if so, the place of detention or shelter care and the time the child was taken into custody, and the time the child was placed in detention or shelter care.

(5) when any of the facts herein required are not known, except the facts required by subsection (e)(4), the petition shall so state.

COMMENT

This section places the responsibility upon the Prosecuting Officer to represent the petitioner where the petition alleges either that the child is neglected or delinquent. This is an appropriate function for the Prosecuting Officer since the State is the real party in interest to the proceedings. Such a requirement obviates the necessity of either the judge or the probation officer to assume a prosecutorial function which would be wholly inappropriate for them in view of their other roles in the total proceedings.

It should also be noted that in both this section and Section 13, the *signing* of a petition, i.e., verifying the petitioner's knowledge of the facts and the petitioner's belief in their truth, and the *filing* of the petition are separate and distinct acts. Some confusion has arisen in some jurisdictions where the term "filing" has been used as including the act of signing. Petitions in both neglect and delinquency cases must be countersigned by the Prosecuting Officer before they may be filed with the court.

The limitation on who may sign a petition alleging that a child is neglected is designed to afford an appropriate agency—preferably a State or local agency vested with the authority to provide services for children and youth—the opportunity of offering its services to remedy the situation, thus invoking the authority of the court to take authoritative action only where voluntary efforts have failed.

SECTION 15. SUMMONS

(a) After a petition alleging delinquency and neglect has been filed, the court shall direct the issuance of summonses, one directed to the child, if the child is (14) or more years of age, and another to the parents, guardian, or other custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. If the child is married, the spouse shall also be served with a summons.

(b) The summons shall advise the parties of their right to counsel as provided in Section 25. A copy of the petition shall be attached to each summons.

(c) The judge may endorse upon the summons an order directing the parents, guardian, or other custodian having the custody or control of the child to bring the child to the hearing.

(d) If it appears, from affidavit or sworn statement presented to the judge, that the child needs to be placed in detention or shelter care pursuant to Section 20, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of detention or shelter care designated by rules or court.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

COMMENT

Subsection (b) provides for notice of the right to counsel and also provides that a copy of the

petition be attached to each summons. These two requirements are in conformity with the Gault decision (In re Gault, 387 U.S. 1, 1967). Otherwise, the section is a common one.

It should also be noted that under the provisions of Section 50, the court would have the power to punish for contempt any person—including the parents of the child—who refused to respond to the summons to appear in court.

SECTION 16. SERVICE OF SUMMONS

(a) If a party to be served with a summons can be found within the State, the summons shall be served upon him personally at least 24 hours before the hearing. If he is within the State and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served upon him by mailing a copy thereof by certified mail at least 5 days before the hearing. If he is without the State but he can be found or his address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail.

If after reasonable effort he cannot be found or his post office address ascertained, whether he is within or without a State, the court may order service of the summons upon him by publication in accordance with the provisions of ( )[13] in which event the hearing shall not be less than 5 days after the date of last publication.

(b) Service of summons may be made under the direction of the court by any law enforcement officer or other suitable person.

(c) The court may authorize the payment from ( )[14] funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

SECTION 17. TIME LIMITATIONS

(a) On motion by or on behalf of a child, a petition alleging such child to be neglected or delinquent shall be dismissed, with prejudice, where the allegations of the petition are not determined by an admission by the child, or where a hearing on the allegations of the petition is not commenced witnin:

(1) 10 days (Saturdays, Sundays and holidays included) from the date the petition is filed, where the child in custody is denied unconditional release at the child's detention or shelter care hearing;

(2) 15 days (Saturdays, Sundays and holidays excluded) from the date the petition is filed where a child, once in custody with respect to actions alleged in the petition or with respect to actions based on the same conduct, is released at or before the child's detention or shelter care hearing;

(3) 15 days (Saturdays, Sundays and holidays excluded) from the date the petition is filed where a child was never in custody with respect to actions alleged in the petition or with respect to actions based on the same conduct;

(4) 10 days or 15 days respectively (Saturdays, Sundays and holidays included) from the time the child was taken into custody as provided in subsections (a)(1) and (a)(2) of this section in cases where the summons directs that the child be taken into custody by the officer serving the summons, and the child has not previously been in custody with respect to actions alleged in the petition or with respect to actions based on the same conduct.

(b) The following times shall be excluded in computing the time for a hearing on the allegations in the petition:

(1) The period of delay resulting from other proceedings concerning the child, including but not limited to, an examination and hearing relating to mental health, pre-hearing motions, waiver motions, and hearings on other matters, but not to exceed an additional period of 20 days (Saturdays, Sundays and holidays included) except with the consent of the child and the child's counsel where the child in custody is denied unconditional release at the child's detention or shelter care hearing;

(2) The period of delay resulting from a continuance granted at the request of the child and the child's counsel;

(3) The period of delay resulting from a continuance granted at the request of the prosecutor if the continuance is granted because

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[13]Insert the general service of publication statutes.

[14]Insert appropriate fiscal source.

of the unavailability of evidence material to his case, when the prosecutor has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date, or the continuance is granted to allow the prosecutor additional time to prepare his case and additional time is justified because of exceptional circumstances of the case, but not to exceed an additional period of 20 days (Saturdays, Sundays and holidays included), except with the consent of the child and the child's counsel, where the child in custody is denied unconditional release at the child's detention or shelter care hearing;

(4) The period of delay resulting from the imposition of a consent decree;

(5) The period of delay resulting from the absence or unavailability of the child;

(6) In delinquency cases, a reasonable period of time when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the cases separately; otherwise, the child's case shall be separated from the hearing of another child alleged to have participated in the same action so that a hearing may be held within the applicable time limits. Where there is a delay so that the cases may be joined, the additional period of time with respect to the child whose time for a hearing has run shall not exceed an additional period of 20 days (Saturdays, Sundays and holidays included), except with the consent of the child and the child's counsel, where the child in custody has been denied unconditional release at the child's detention hearing.

(7) Other periods of delay only for overwhelming cause except with the consent of the child and the child's counsel where the child has been denied unconditional release from detention or shelter care.

COMMENT

This section is designed to speed up court processes and to prevent long delays before hearings, particularly in those cases where a child is held in detention or shelter care. Long delays often occur before final disposition. Those are often due to lack of resources and facilities. It is suggested that a time limitation be established for final disposition that allows for flexibility in order to meet this problem. It should also be noted that the very nature of this section will require the court and probation service to record certain information which studies have shown to be unavailable in many jurisdictions.

This section is patterned after the *Minimum Standards for Criminal Justice Relating to Speedy Trial*, which have been promulgated by the American Bar Association.

SECTION 18. TAKING INTO CUSTODY

A child may be taken into custody:

(1) Pursuant to the order of the court under Sections 15 and 19;

(2) For a delinquent act pursuant to the laws of arrest;

(3) By a law enforcement officer having reasonable grounds to believe that the child has run away from a correctional facility.

(4) By a law enforcement officer having reasonable grounds to believe that the child is suffering from illness or injury or in immediate danger from the child's surroundings and that the child's immediate removal from such surroundings is necessary for the protection of the health and safety of such child;

(5) By a law enforcement officer who has reasonable grounds to believe that the child has run away from a residential, non-correctional, child-caring facility in which he had been lawfully placed;

(6) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, guardian, custodian or other suitable person willing and able to provide supervision and care for such child; or

(7) By a probation officer or social service worker, pursuant to Section 6(b) of this (act).

COMMENT

In the past, statutes have provided that taking into custody shall not be considered an arrest. However, for all practical purposes, this has been a legal fiction since the child is being held in involuntary custody. It is particularly important that this be recognized in the light of recent decisions and also in order to facilitate the development of appropriate guidelines for law

enforcement practices. Therefore, under this section, the taking into custody of a child for a delinquent act is to be considered an arrest for the purpose of determining the validity of taking him into custody or the validity of any actions or procedures related to the arrest. It should be noted that a child who has run away from home may be taken into custody under subsections (3), (4), (5) and (6), depending upon the circumstances of the situation.

SECTION 19. RELEASE-REFERRAL-DELIVERY OF CHILD

(a) Where a child is taken into custody by a law enforcement officer pursuant to the provisions of subsections (5) and (6) of Section 18 of this (act):

(1) such law enforcement officer shall, with all possible speed, determine, in accordance with guidelines established by the ( )[15] and conforming with the provisions of this (act), whether or not such child should be released to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child;

(2) if the law enforcement officer determines that such release would be in accord with established guidelines, the child shall be immediately released and returned to his place of abode. The law enforcement officer shall promptly notify the Division of Preventive Services of the circumstances and reasons for taking into custody and release of the child, *Provided that*: the law enforcement officer may hold conferences with the parents, guardian, custodian or other suitable person in an attempt to determine what action to take but may not impose any restrictions, terms, conditions or limitations upon the release of such child;

(3) if the law enforcement officer determines that the release of such child would not be in accord with such established guidelines, the law enforcement officer shall transport such child in the most expeditious and appropriate manner possible to the Division of Preventive Services or to:

(i) a facility approved and designated by the department for the provision of shelter care, transferrring custody of such child to the facility, filing at the time of such transfer a written report of the circumstances and reasons for taking such child into custody; or

(ii) a medical or mental health facility designated by the department for that purpose, if the child is suffering from a serious physical or mental condition requiring immediate care and treatment, notifying the Division of Preventive Services, both orally and in writing, of the circumstances and reasons for taking such child into custody.

(4) the law enforcement agency shall promulgate, with the approval of ( )[15] guidelines implementing the provisions of this (act) and the rules of court pursuant thereto;

(b) A person taking a child into custody pursuant to the provision of subsections (2) and (3) of Section 18 shall, with all possible speed, and in accordance with the provisions of this (act) and the rules of court pursuant thereto:

(1) release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate;

(2) refer the child, with the consent of the child's parents, guardian or custodian, and of the child if (14) years of age or older, to the Division of Preventive Services;

(3) release the child to the child's parents, guardian or custodian upon their promise to bring the child before the court when requested, unless the child's placement in detention or shelter care appears required as provided in Section 20;

(4) if not released, bring the child to the Intake Office of probation services or deliver the child to a place of detention or shelter care designated by the department and, in the most expeditious manner possible, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the intake office, to the court, and orally and in writing to the parent, guardian or other custodian of the child.

(c) Any questioning of a child necessary to comply with subsections (a) and (b) of this section shall conform as to the place, procedures and conditions prescribed by this (act) and rules of court pursuant thereto:

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[15] Insert the name of the board, agency or individual given the ultimate responsibility for supervising the activities of the law enforcement agency, i.e., mayor, city council, governor, etc.

(d) Whenever a child, taken into custody pursuant to the provisions of this (act) is brought to a shelter care facility established or approved by the department or to the Intake Office of probation services or to a detention or shelter care facility designated by the Division of Treatment Services, the person in charge of such Intake Office or facility, prior to admitting the child for care, shall review the need for detention or shelter care and shall release the child unless detention or shelter care is required under Section 20 or has been ordered by the court pursuant to Section 15.

(e) If a parent, guardian, or other custodian fails, when requested, to bring the child before the court as provided in subsection (b)(3), the court may issue its warrant directing that the child be taken into custody and brought before the court.

(f) A person taking a child into custody pursuant to the provisions of subsections (1) and (7) of Section 18 shall bring the child to the place of detention or shelter care or to the Intake Office of probation services, if the child is delinquent or believed to be delinquent, or to the Division of Preventive Services, if the child is neglected or believed to be neglected, either of which shall thereupon proceed in accordance with the provisions of this (act).

(g) A person taking a child into custody pursuant to subsection (4) of Section 18 shall bring the child to a medical or mental health facility designated by the department if the child is believed to be suffering from a serious mental health condition, illness, or injury, which requires either prompt treatment or prompt diagnosis for evidentiary purposes, and in the most expeditious manner possible, give notice of the action taken together with a statement for taking the child into custody in writing to the court and to the Intake Office of probation services if the child was involved or believed to be involved in the commission of a delinquent act or, if not involved in a delinquent act, to the Division of Preventive Services, and give notice orally and in writing to the parent, guardian, or other custodian of the child.

COMMENT

A number of the provisions of this section conform to Standard 14.2 in "Report on Courts," National Advisory Commission on Criminal Justice Standards and Goals (1973): Govt. Printing Office, Washington, D.C. (2700-00173).

SECTION 20. CRITERIA FOR CONTINUING DETENTION OR SHELTER CARE OF CHILDREN TAKEN INTO CUSTODY

(a) Unless otherwise ordered by the court pursuant to the provisions of this (act), a child lawfully taken into custody as an allegedly neglected or delinquent child shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody and control of such child's parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such child except in situations where:

(1) the child has no parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such child; or

(2) the release of the child would present a clear and substantial threat of a serious nature to the person or property of others where the child is alleged to be delinquent; or,

(3) the release of such child would present a serious threat of substantial harm to such child; or,

(4) the child has a history of failing to appear for hearings before the court.

(b) The criteria for continuing the child in detention or shelter care as set forth in subsection (a) of this section, shall govern the decisions of all persons involved in determining whether the continued detention or shelter care is warranted pending court disposition and such criteria shall be supported by clear and convincing evidence in support of the decision not to release the child.

COMMENT

This section is designed to reduce the number of children in detention by the establishment of specific criteria for use by law enforcement officers and probation personnel.

If it cannot be affirmatively shown that the child's situation falls within the criteria established, the child should be released forthwith.

The burden of proof—by clear and convincing evidence—should be borne by the State. The presumption should be that the child should be released and, absent the rebuttal of that presumption, should be given his freedom. He should be deprived of that freedom only where the contrary has been shown by clear and convincing evidence.

SECTION 21. DETENTION AND SHELTER CARE FACILITIES—AUTHORIZED USE

In providing detention and shelter care for children referred to or coming under the jurisdiction of the court, the court shall utilize only such facilities as have been established or approved by the department for such purposes.

COMMENT

The legislation establishing a State executive agency charged with the responsibility for the prevention, care and treatment of delinquency should also place responsibility in that agency for the development and administration of a statewide system of detention and shelter care facilities. The statute governing the juvenile court's operation should require the court to utilize only such facilities which are established or approved by the State agency.

It has been recognized for some time that if children are to be kept out of jail, a statewide system of detention and shelter care must be developed since most local jurisdictions will find it impossible from an economic or program standpoint to build and operate their own detention homes.

The administration of such a program is not appropriate to the judicial branch of government. There is no more logic for a family or juvenile court judge to be administratively responsible for the operation of a detention or shelter care program than for a criminal court judge to be administratively responsible for the operation of jails or other correctional institutions for adults.

SECTION 22. PLACE OF DETENTION OR SHELTER

(a) A child alleged to be delinquent may be detained, pending court hearing, in the following places:

(1) a licensed foster home or a home otherwise authorized by law to provide such care;

(2) a facility operated by a licensed child welfare agency;

(3) a detention home for children alleged to be delinquent provided for in Section 19; and

(4) any other suitable place designated by the court and approved by the department provided that no place of detention or shelter care may be designated if it is a facility to which children adjudicated delinquent may be committed under this (act).

(b) A delinquent child or a child alleged to be delinquent who is 16 years of age or older may be detained in a jail or other facility for the detention of adults only if:

(1) the facility in subsection (a)(3) is unavailable;

(2) the detention is in a room separate and removed from adults;

(3) adequate supervision is provided; and

(4) the facility is approved by the department.

(c) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child, who is or appears to be under the age of 18 years, is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

(d) When a case is transferred to another court for criminal prosecution, the child shall be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of such person charged with crime.

(e) A child alleged to be neglected may be detained or placed in facilities for shelter care enumerated in subsections (a)(1), (a)(2) and (a)(4), and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or for children alleged to be delinquent.

COMMENTS

This section places protections around the use of detention and prohibits jail detention of any kind where a detention home for children is available. It also prohibits the placing of neglected children in a facility with delinquent

children or in detention facilities for adults. It also prohibits the detaining of delinquent children in institutions for the long-time treatment of children adjudicated delinquent. In order to expedite the development of a statewide program, the use of a jail or other facility for the detention of adults should be prohibited after a certain date timed so as to give the State agency sufficient time to establish appropriate facilities.

SECTION 23. RELEASE FROM DETENTION OR SHELTER CARE—FILING OF PETITION—HEARING—CONDITIONS OF RELEASE

(a) When a child is not released from detention or shelter care as provided in Section 19:

(1) a petition shall be filed within 24 hours, Saturdays, Sundays and holidays included;

(2) a detention or shelter care hearing shall be held within 24 hours, Saturdays, Sundays and holidays included, from the time of filing the petition to determine whether continued detention or shelter care is required pursuant to Section 20.

(b) Notice of the detention or shelter care hearing, either oral or written, stating the time, place and purpose of the hearing and the right to counsel shall be given to the parent, guardian, or custodian if they can be found and to the child if over (14) years of age or if delinquency is alleged;

(c) At the commencement of the detention or shelter care hearing, the judge shall advise the parties of the right to counsel and shall appoint counsel as required by Section 25. The parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency. They shall also be informed of the contents of the petition and shall be given an opportunity to admit or deny the allegations of the petition.

(d) When the judge finds that a child's full-time detention or shelter care is not required, the court shall order his release, and in so doing, may impose one or more of the following conditions singly or in combination:

(1) place the child in the custody of a parent, guardian, or custodian under their supervision, or under the supervision of an organization agreeing to supervise him;

(2) place restrictions on the child's travel, association, or place of abode during the period of his release; or

(3) impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in Section 20, including a condition requiring that the child return to custody as required.

(e) An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody for failure to conform to the conditions originally imposed.

(f) All relevant and material evidence helpful in determining the need for detention or shelter care may be admitted by the court even though not competent in a hearing on the petition.

(g) If the child is not released and a parent, guardian or other custodian has not been notified and did not appear or waive appearance at the hearing, upon his filing his affidavit stating these facts, the court shall rehear the matter within 24 hours, Saturdays, Sundays and holidays included.

(h) When a child is released as provided in Section 19, a petition shall be filed within 72 hours, not including Saturdays, Sundays, and holidays, and a hearing shall be held pursuant to Section 17.

COMMENT

This section provides that if a child is not released, a petition shall be filed within 24 hours, Saturdays, Sundays and holidays included. This provision is based on the theory that if the situation is serious enough to detain the child, it will generally be found to be serious enough to require the filing of a petition.

This section also requires a hearing on detention or shelter care be held within 24 hours from the time of filing the petition, Saturdays, Sundays and holidays included. This means that judicial and other personnel must be available; however, the requirement is justified on legal, social and economic grounds.

If the child's situation does not fall within the criteria provided for in Section 20, the child must be released; however, the court may

impose one or more of several conditions at the time of release.

SECTION 24. SUBPOENA

Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects at any hearing.

SECTION 25. RIGHT TO COUNSEL

(a) In delinquency cases, a child and his parents, guardian, or custodian shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

(b) In neglect cases, the parents, guardian, or custodian shall be informed of their right to be represented by counsel and, upon request, counsel shall be appointed where the parties are unable, for financial reasons, to retain their own. The court shall also appoint counsel for the child in neglect situations where there is an adverse interest between parent and child, or counsel is otherwise required in the interests of justice.

COMMENT

This section provides for a non-waiverable right to counsel in delinquency cases. In order to expedite the administration of juvenile justice, it will be necessary to have counsel readily available. It is believed that the public defender system and law guardian system as now operating in New York State are probably the most effective means of accomplishing this goal. The court may also appoint a guardian or a guardian ad litem for the child under Section 41.[16]

SECTION 26. ADMISSIBILITY OF CHILD'S PRELIMINARY STATEMENT

Unless advised by counsel, the statements of a child or other information or evidence derived directly or indirectly from such statements made while in custody to police or law enforcement officers or made to the prosecutor, probation officer, or social service worker, during the process of the case, including statements made during a preliminary inquiry, predisposition study or consent decree, shall not be used prior to a determination of the petition's allegations in a delinquency case or in a criminal proceeding prior to conviction.

COMMENT

This section goes beyond the Miranda decision[17] in the sense that it does not permit a child to waive counsel and then make statements which could later be used against him. The section therefore is consistent theoretically with the non-waiverable right to counsel position adopted for family court hearings of delinquency cases. Statements made while a child is not in custody (e.g., "threshold admissions") are not excluded. This section, of course, does not preclude a child and his counsel from entering into express agreements with court officials or others that statements of a child shall not later be used against him.

SECTION 27. PROHIBITION AGAINST DOUBLE JEOPARDY

Criminal proceedings and other juvenile proceedings based upon the offense alleged in the petition or an offense based upon the same conduct is barred where the court has begun taking evidence or where the court has accepted a child's plea of guilty to the petition.

COMMENT

This embodies traditional constitutional law concepts as to the time when jeopardy attaches. It is aimed at ensuring that no child will be prosecuted first as a juvenile and then later as an

[16] In re Gault, 387 U.S. 1 (1967). Gideon v. Wainright, 372 U.S. 335 (1963).

[17] Miranda v. Arizona, 384 U.S. 436 (1966); Escobedo v. Illinois, 378 U.S. 478 (1964).

adult, or in two juvenile court hearings for the same offense.[18]

SECTION 28. OTHER BASIC RIGHTS

A child charged with a delinquent act shall be accorded the privilege against self-incrimination. An extra-judicial statement which would be constitutionally inadmissible in a criminal proceeding shall not be received in evidence over objection. Evidence illegally seized or obtained shall not be received in evidence over objection to establish the allegations against him. An extra-judicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.

COMMENT

This section, along with Sections 25, 26 and 27, establish rights for the child, some of which are required by recent decisions and some of which can reasonably be expected to be required in the future. It is likely that the courts will provide a child with at least the same degree of protection they provide an adult, if not more.[19]

SECTION 29. CONDUCT OF HEARING

(a) Hearings under this (act) shall be conducted by the court without a jury and separate from other proceedings not included in Section 7(a)(1).

(b) The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. If not so recorded, full minutes of the proceedings shall be kept by the court.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from delinquency and neglect hearings and only the parties, their counsel, witnesses and other persons requested by a party shall be admitted. Such other persons as the court finds to have a proper interest in the case or in the work of the court, including members of the bar and press, may be admitted by the court on condition that such persons refrain from divulging any information which would identify the child or family involved. If the court finds that it is in the best interest of the child, his presence may be temporarily excluded from the hearings except while allegations of delinquency or conduct evidencing neglect are being heard.

COMMENT

This section eliminates jury trials but requires that the proceedings be recorded or that full minutes of the proceedings be kept by the court.[20] It also provides for privacy of hearing. In addition to the parties, counsel, and witnesses, it gives the court discretion in certain situations to admit other persons to the hearing.

SECTION 30. PREDISPOSITION STUDY AND REPORT

(a) After a petition alleging delinquency or neglect has been filed, the court shall direct that a predisposition study and report to the court be made by probation services where the petition alleges that the child is delinquent and by the Division of Preventive Services when the petition alleges that the child is neglected, concerning the child, his family, his environment, and other matters relevant to the need for treatment or disposition of the case. The study and report shall not be made prior to a finding with respect to the allegations in the petition unless a notice of intent to admit the allegations is filed, and the party consents thereto.

(b) where there are indications that the child may be mentally ill or mentally retarded, the court, on its own motion, on motion by the prosecutor or that of counsel for the child, may order the child to be examined at a suitable place by a physician, psychiatrist, or psychologist prior to a hearing on the merits of the petition. Such examinations made prior to hearing or as part of the study provided for in subsection (a) of this section shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.

(c) The court, after hearing, may order examination by a physician, surgeon, psychiatrist, or

[18] U.S. v. Dickerson, 168 F. Supp. 899 (1958).

[19] In re Gault, 387 U.S. 1 (1967).

[20] McKeiver v. Pennsylvania 403 U.S. 528 (1971).

psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child before the court is at issue.

COMMENT

This section requires a predisposition study in every case. This is considered an extremely important requirement necessary for reaching a disposition which will take into consideration the interests of the child and the community.

It prohibits such study, however, prior to a finding on the allegations in the petition unless a notice to admit the allegations is filed and the party consents to the study.

It also permits the court on its own motion or that of counsel for the child to require examinations of the child where there are indications that the child may be mentally ill or mentally retarded.

SECTION 31. TRANSFER TO CRIMINAL COURT

(a) The prosecutor may, within 5 days of the date a delinquency petition has been filed and before a hearing on the petition on its merits, and following consultation with probation services, file a motion requesting the court to transfer the child for criminal prosecution, if:

(1) the child was 16 or more years of age at the time of the conduct charged, and is alleged to have committed an act which would constitute a felony if committed by an adult; or

(2) the child is 16 or more years of age and is already under commitment to an agency or institution as a delinquent; or

(3) a person 18 years of age or older is alleged to have committed the delinquent act prior to having become 18 years of age.

(b) Following the filing of the motion of the prosecutor, summonses shall be issued and served in conformity with the provision of Sections 15 and 16. A copy of the motion and a copy of the delinquency petition, if not already served, shall be attached to each summons.

(c) The court shall conduct a hearing on all such motions for the purpose of determining whether there are reasonable prospects of rehabilitating the child prior to his 19th birthday. If the court finds that there are not reasonable prospects for rehabilitating the child prior to his 19th birthday and there are no reasonable grounds to believe he is committable to an institution or agency for the mentally retarded or mentally ill, it shall order the case transferred for criminal prosecution.

(d) When there are grounds to believe that the child is committable to an institution or agency for the mentally retarded or mentally ill, the court shall proceed as provided in Section 40.

(e) Evidence of the following factors shall be considered in determining whether there are reasonable prospects for rehabilitating a child prior to his 19th birthday:

(1) the nature of the present alleged offenses and the extent and nature of the child's prior delinquency record;

(2) the nature of past treatment efforts and the nature of the child's response to past treatment efforts; and

(3) the techniques, facilities and personnel available to the court for rehabilitation.

(f) Prior to a hearing on the motion by the prosecutor, a study and report to the court, in writing, relevant to the factors in subsection (e)(1), (2), and (3) shall be made by probation services.

(g) When a person is transferred for criminal prosecution, the court shall set forth in writing its reasons for finding that there are no reasonable prospects for rehabilitating the person prior to his 19th birthday.

(h) Transfer of a person 16 years of age or older for criminal prosecution terminates the jurisdiction of the family court over the child with respect to any subsequent delinquent acts.

(i) A judge who conducts a hearing pursuant to this section shall not, over the objection of the child whose prospects for rehabilitation were at issue, participate in any subsequent proceedings relating to the offense.

COMMENT

This section permits waiver of a child 16 years or older who has committed an offense which would be a felony if committed by an adult. It also permits waiver for any offense in the case of a child 16 years of age or older who is under commitment to an agency as a delinquent, or a person 18 years of age or older who had committed a delinquent act prior to becoming

18 years of age. Where there are reasonable grounds to believe that a child is mentally retarded or mentally ill, waiver is prohibited preceding a finding as to either disability. When a child is found to be committable as a mentally ill or mentally retarded child, no transfer is permitted.

The criterion for waiver is whether there are reasonable prospects for rehabilitating the child prior to his 19th birthday. It also spells out the factors to be considered in establishing this criterion. It requires a study of the factors relevant to waiver and a written statement of the findings of the court. These requirements are considered necessary in the light of the Kent case (see Kent v. United States, 383 U.S. 541, 565; 1966).

The request for waiver is initiated by motion filed by the prosecuting official after consultation with probation services. The motion must be filed within 5 days of the date the delinquency petition was filed.

SECTION 32. HEARINGS—FINDINGS—DISMISSAL

(a) The parties shall be advised of their rights under law in their first appearance at intake and before the court. They shall be informed of the specific allegations in the petition and given an opportunity to admit or deny such allegations.

(b) If the allegations are denied, the court shall proceed to hear evidence on the petition. The court shall record its findings on whether or not the child is a neglected child or, if the petition alleges delinquency, as to whether or not the acts ascribed to the child were committed by him. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or temporary care theretofore ordered in the proceeding.

(c) If the court finds on the basis of a valid admission or a finding on proof beyond a reasonable doubt, based upon competent, material, and relevant evidence, that a child committed the acts by reason of which he is alleged to be delinquent, it may, in the absence of objection, proceed immediately to hear evidence as to whether the child is in need of care or rehabilitation and to file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care theretofore ordered.

(d) If the court finds from clear and convincing evidence, competent, material, and relevant in nature, that the child is neglected and in need of care or supervision, or from clear and convincing evidence, relevant and material in nature, that the child is in need of care or rehabilitation as a delinquent child, the court may proceed immediately or at a postponed hearing to make proper disposition of the case.

(e) In disposition hearings all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent in a hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when reasonably available, but sources of confidential information need not be disclosed.

(f) On its own motion or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition or need for care or rehabilitation. In this event, the court shall make an appropriate order for detention or temporary care of the child or his release from detention or temporary care during the period of the continuance subject to such conditions as the court may impose pursuant to Section 23 of this (act).

COMMENT

This section does not require any specific number of hearings, it does provide for the procedures as well as the findings which must be made. In this way, flexibility is provided. In one type of situation, the case may be disposed of at a single hearing. This is even possible at a detention or shelter care hearing. In another case, several hearings may be necessary. It should also be noted that in making a finding as

to the allegations in the petition in a delinquency case, proof beyond a reasonable doubt is required. A finding, however, that a child is neglected and in need of care or supervision or that he is in need of care or rehabilitation as a delinquent child, shall be based on clear and convincing evidence. The section further provides that all information including oral and written reports submitted in the determination that the child is in need of care or rehabilitation or supervision shall be available to the parties and their counsel.[21]

SECTION 33. CONTINUANCE UNDER SUPERVISION WITHOUT ADJUDICATION—CONSENT DECREE

(a) At any time after the filing of a delinquency petition and before the entry of an adjudication order, the court may, on motion of the prosecutor or that of counsel for the child, suspend the proceedings, and continue the child under supervision in his own home, under terms and conditions negotiated with probation services and agreed to by all parties affected. The court's order continuing the child under supervision shall be known as a consent decree.

(b) Where the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition. Where the child does not object, but an objection is made by the prosecutor after consultation with probation services, the court shall, after considering the objections and reasons therefor, proceed to determine whether it is appropriate to enter a consent decree.

(c) A consent decree shall remain in force for 6 months unless the child is discharged sooner by probation services. Upon application of probation services or other agency supervising the child, made before expiration of the 6-month period, a consent decree may be extended by the court for an additional 6 months.

(d) If prior to discharge by the probation services or expiration of the consent decree, a new delinquency petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may, in the discretion of the prosecutor following consultation with probation services, be reinstated and the child held accountable just as if the consent decree had never been entered.

(e) A child who is discharged by the probation services, or who completes a period of continuance under supervision without reinstatement of the original delinquency petition, shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct.

(f) A judge who, pursuant to this section, elicits or examines information or material about a child which would be inadmissible in a hearing on the allegations in the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency petition if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or

(2) a consent decree is granted but the delinquency petition is subsequently reinstated under subsection (d).

COMMENT

This section is patterned after the recommendation of the President's Commission on Law Enforcement and Administration of Justice in its report, *The Challenge of Crime in a Free Society* (1967). It permits the court on its own motion or on the motion of the party to suspend the proceedings and continue the child under supervision in his own home at any time before the entry of a finding with respect to the allegations in the petition. This will not only expedite the administration of justice but also can eliminate the need of a finding of delinquency which may cause problems for the child later in life. A number of provisions included are designed not only to protect the child but also to protect the public. This section should eliminate the necessity of the court carrying cases on an informal or unofficial basis. In fact, no informal counseling or unofficial handling on an extended basis is provided for under this (act).

[21] In re Winship, 90 S. Ct. 1968, 396 U.S. 885 (1970).

SECTION 34. DISPOSITION OF NEGLECTED CHILD–DELINQUENT CHILD

(a) If a child is found to be neglected, the court may make any of the following orders of disposition to protect the welfare of the child:

(1) permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe;

(2) place the child under protective supervision;

(3) transfer legal custody to any of the following–

(i) the Division of Preventive Services;

(ii) a local public child-placing agency or private organization or facility willing and able to assume the education, care and maintenance of the child at no expense to the public, and which is licensed or otherwise authorized by law to receive and provide care for such child,

(iii) a relative or other individual who, after study by the Division of Preventive Services is found by the court to be qualified to receive and care for the child.

(4) in the case of any child, 14 years of age or older, where the court finds that the school officials have made a diligent effort to meet the child's educational needs, and after study, the court further finds that the child is not able to benefit appreciably from further schooling, the court may–

(i) excuse the child from further compliance with any legal requirement of compulsory school attendance, and

(ii) authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of 18.

(b) Unless a child found neglected shall also be found to be delinquent, he shall not be committed to or confined to an institution established for the care and rehabilitation of delinquent children.

(c) If a child is found to be delinquent, the court may make any of the following orders or dispositions for his supervision, care and rehabilitation:

(1) permit the child to remain with parent, guardian or other custodian subject to such conditions and limitations as the court may prescribe;

(2) place the child on probation under such conditions and limitations as the court may prescribe;

(3) transfer legal custody to any of the following:

(i) the Division of Treatment Services,

(ii) a local, public child placing agency or private organization or facility willing and able to assume the education, care and maintenance of the child at no expense to the public and which is licensed or otherwise authorized by law to receive and provide care for children,

(iii) a relative or other individual who, after study by the Division of Probation Services, is found by the court to be qualified to receive and care for the child.

(4) any order which is authorized by subsections (a)(4) of this section.

(d) No child by virtue of a disposition under this section shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of a crime.

(e) Whenever the court vests legal custody in an agency or department, it shall transmit with the order copies of the clinical reports, predisposition study, and other information it has pertinent to the care and treatment of the child.

COMMENT

This section provides for differential disposition of neglected children and delinquent children. The commitment or placement of a neglected child in an institution for delinquent children is prohibited. It also prohibits the commitment or transfer of a delinquent child to a penal institution or other facility for the execution of sentences of persons convicted of a crime.

Transferring legal custody directly to a private child placing agency or facility is limited to cases where the parent and/or the agency can assume full expenses. When public funds are used to compensate a private agency, it is recommended, for budget planning and accountability purposes, that legal custody be vested in the public agency which should be authorized to purchase such care from the private agency.

SECTION 35. ORDER OF ADJUDICATION–NONCRIMINAL

An order of disposition or other adjudication in proceedings under Section 7(a)(1) of this

(act) shall not be considered to be a conviction or impose any civil disabilities ordinarily resulting from a conviction of a crime or operate to disqualify the child in any civil service application or appointment.

The disposition of a child and evidence given in a hearing in the family court shall not be admissible as evidence against him in any case or proceeding in any other court whether before or after reaching majority except in a disposition hearing in a juvenile court or in sentencing proceedings after conviction of a crime for the purposes of a presentence study and report or to attack the credibility of a child as a witness.[22]

SECTION 36. SERVICE BY PUBLICATION—INTERLOCUTORY ORDER OF DISPOSITION

(a) If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:

(1) the petition alleges delinquency or neglect of the child; and

(2) the summons served upon any party—

(i) states that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place,

(ii) requires the party served to appear and answer the allegations of the petition at such hearing,

(iii) states further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing, and

(iv) otherwise conforms to the provisions of Section 15, and

(3) the child is personally before the court at the provisional hearing on petitions alleging delinquency. The court may waive the presence of the child in neglect cases except where the child is over the age of 12 and desires to be present or the child's attorney desires that he be present, or the child's parents or the prosecutor requests the presence of the child at the hearing.

(b) All provisions of this (act) applicable to a hearing on a petition and to orders of disposition and to other proceedings dependent thereon shall apply to proceedings under this section, but findings of fact and orders of disposition shall have only interlocutory effect pending the final hearing on the petition and the rights and duties of the party served by publication shall not be affected except as provided in subsection (c).

(c) If the party served by publication fails to appear at the final hearing on the petition, the findings of fact and interlocutory orders made shall become final without further evidence and shall be governed by the provisions of this (act) as if made at the final hearing. If such party appears at the final hearing, such findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition as otherwise provided by this (act) without regard to this section.

COMMENT

This section permits the court in cases where summons is made by publication to proceed with the case and to take the necessary action with respect to the child. In the large majority of such cases, the party so served may not appear.

SECTION 37. LIMITATION OF TIME ON DISPOSITIONAL ORDERS

(a)

(1) An order vesting legal custody of a child in a department or agency shall remain in force for an indeterminate period not exceeding 1 year from the date entered, provided, however, that the child shall be released within the 1-year period by the department or agency when it appears that the purpose of the order has been achieved,

(2) An order vesting legal custody of a child in an individual shall remain in force for 1 year from the date entered unless sooner terminated by court order,

(3) An order of probation or protective supervision shall remain in force for an indeterminate period not exceeding 1 year from the date entered, provided, however, such probation or supervision shall be terminated within 1-year

[22] Davis v. Alaska, 415 U.S. 308 (1974).

period by probation services or agency providing the supervision where it appears that the purpose of the order has been achieved.

(b)

(1) Prior to the expiration of an order transferring legal custody, the court may extend the order for an additional period of 1 year if it finds after a hearing, pursuant to Section 38, that the extension is necessary to safeguard the welfare of the child or the public interest.

(2) Prior to the expiration of an order of probation or protective supervision, the court may extend it for an additional period of 1 year after a hearing pursuant to Section 38 if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

(c) When a child reaches 19 years of age, all orders affecting him then in force terminate.

(d) A release or termination, and the reasons therefor, made under subsections (a)(1) and (a)(3) of this section shall be promptly reported to the court in writing.

COMMENT

This is designed as a protection for the child and a check on agencies which may be providing care and service. It should prevent children from becoming "lost" in a program and will stimulate continuous planning and work by the agency during the period of commitment, which may be renewed periodically until the child reaches the age of 19. It requires the agency to release the child or terminate probation when it appears that the purposes of such orders have been achieved. When such action is taken, a report of the action and the reasons therefor shall be promptly reported to the court in writing.

SECTION 38. MODIFICATION–TERMINATION OR EXTENSION OF COURT ORDERS

(a) At any time prior to expiration, an order vesting legal custody or an order of protective supervision made by the court in the case of a child may be modified, revoked, or extended on motion by:

(1) a child, whose legal custody has been transferred to an institution, agency, or person, requesting the court for a modification or termination of the order alleging that he is no longer in need of commitment or protective supervision, and the institution, agency, or person has denied application for release of the child or has failed to act upon the application within a reasonable time; or

(2) an institution, agency, or person vested with legal custody or responsibility for protective supervision requesting the court for an extension of the order on the grounds that such action is necessary to safeguard the welfare of the child or the public interest.

(b) The court may dismiss the motions filed under subsection (a) of this section, if, after preliminary investigation, it finds that they are without substance. If it is of the opinion that the order should be reviewed, it may, upon due notice to all necessary parties as prescribed by rules of court, proceed to a hearing in the same manner and under the same safeguards provided for in this (act) for the issuance of the original order. It may thereupon terminate the order if it finds the child is no longer in need of care, supervision, or rehabilitation, or it may enter an order extending or modifying the original order if it finds such action necessary to safeguard the child or the public interest.

COMMENT

In order to protect the child or the community, a means must be provided whereby the disposition of the court may be modified. This section provides the procedure whereby an order may be modified, revoked, or extended.

SECTION 39. PROBATION–PROTECTIVE SUPERVISION–REVOCATION–DISPOSITION

(a) A child on probation incident to an adjudication as a delinquent who violates the terms of his probation, or a child under protective supervision incident to the adjudication of neglect, who fails to conform to the terms of his protective supervision, may be proceeded against for a revocation of such order.

(b) A proceeding to revoke probation or protective supervision shall be commenced by the filing of a petition labeled "Petition to Revoke Probation: or "Petition to Revoke Protective Supervision." Except as otherwise pro-

vided, such petitions shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in Section 13 and 14 of this (act). The petition shall recite the date that the child was placed on probation or under protective supervision and shall state the time and manner in which notice of the terms of probation or protective supervision were given.

(c) Probation or protective supervision revocation proceedings shall require clear and convincing evidence. In all other respects, proceedings to revoke probation or protective supervision shall be governed by the procedures, safeguards and rights and duties applicable to delinquency and neglect cases contained in this (act).

(d) If a child is found to have violated the terms of his probation pursuant to a revocation hearing, the court may extend the period of probation or make any other order of disposition specified for a child adjudicated delinquent. If a child is found to have violated the terms of his protective supervision pursuant to a revocation hearing, the court may extend the period of protective supervision or may make any other order of disposition specified for a child adjudicated neglected.

COMMENT

This section establishes the procedure and provides for disposition in a hearing for probation or protective supervision revocation. It requires the same proceedings to be followed as in any other petition. However, it provides that the determination that a violation of probation or protective supervision has taken place be based on clear and convincing evidence.

SECTION 40. DISPOSITION OF MENTALLY ILL OR MENTALLY RETARDED CHILD

(a) If, at a hearing to determine whether a child is neglected or in need of care or rehabilitation as a delinquent child pursuant to Section 32, the evidence indicates that the child is mentally retarded or mentally ill, the court may order the child detained if required pursuant to Section 20, and shall direct the department to initiate proceedings under Section 7(b)(6).

(b) If, at a hearing under subsection (a), the evidence indicates that the child may be suffering from mental retardation or mental illness, the court may commit the child for a period no exceeding 30 days to an appropriate institution or agency for further study and a report on the child's condition. If it appears therefrom that the child is committable under the laws of this State as a mentally retarded or mentally ill person, the court may order the child detained if required pursuant to Section 20, and shall direct the department to initiate commitment proceedings under Section 7(b)(6).

(c) In the event the child is committed as a mentally retarded or mentally ill child, the petition alleging delinquency or neglect shall be promptly dismissed.

COMMENT

This section provides for the disposition of petitions with report to children who are found to be mentally ill or mentally retarded. Its effect is to prevent a finding and commitment of such children as neglected or delinquent.

SECTION 41. GUARDIAN AD LITEM—GUARDIAN OF THE PERSON

(a) The court, at any stage of a proceeding under this (act), may appoint a guardian ad litem for a child who is a party to the proceeding, if he has no parent or guardian or custodian appearing on his behalf or their interests conflict with those of the child. A party to the proceeding or his employee or representative shall not be so appointed.

(b) The court, in any proceeding under this (act), shall appoint a guardian of the person for a child in any case where it finds that the child does not have a natural or adoptive parent in a position to exercise effective guardianship or a legally appointed guardian of his person. No office or employee of a State or local public agency, or private agency which is vested with legal custody of a child shall be appointed guardian of the person of the child except when parental rights have been terminated and the agency has been authorized to place the child for adoption.

(c) In any case arising pursuant to Section 7(a)(1), the court may also determine as between parents whether the father or the mother shall have legal custody of the child.

COMMENT

In addition to authorizing the court to appoint a guardian ad litem, this section requires the court to appoint a guardian of the person of a child if the court finds that the child does not have a natural or adoptive parent in a position to exercise effective guardianship or a legally appointed guardian of his person. This requirement is based on the principle that every child is entitled always to have someone legally responsible for him.

No officer or employee of a State or local agency which has legal custody may be appointed as guardian of the person, except where parental rights have been terminated and the agency authorized to place for adoption. This limitation is included since the merging of legal custody and guardianship of a person in an agency would merge these duties in a single entity, thus depriving the child of a separate and independent advocate in the form of a guardian.

The court also is given the authority to determine legal custody as between the parents in cases of neglect or delinquency.

SECTION 42. COURT COSTS AND EXPENSES

(a) The following expenses shall be a charge upon the funds of the ( )[23] upon certification of the same by the court:

(1) the costs of medical and other examinations and treatment of a child found to be neglected or delinquent and ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for the party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in the proceedings under this (act); and (4) reasonable compensation for a guardian ad litem.

(b) If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsections (a)(1) and (a)(2) of this section, the court shall order them to pay the same and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the ( )[24] for remittance to those to whom compensation is due, or if costs and expenses have been paid by the ( )[25] to the appropriate officer of the ( ).[23]

SECTION 43. SUPPORT OF COMMITTED CHILD

Whenever legal custody of a child is vested in someone other than his parents, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

SECTION 44. PROTECTIVE ORDER

In any proceeding commenced under this (act), an application of a party or the court's own motion, the court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction, if:

(1) an order of disposition of a delinquent or neglected child has been made in a proceeding under this (act); and

(2) the court finds that the person's conduct is or may be detrimental or harmful to the child, and will tend to defeat the execution of the order of disposition made; and

(3) due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

SECTION 45. SOCIAL AND LEGAL RECORDS—INSPECTION

(a) Social, medical and psychiatric or psychological records, including reports of preliminary inquiries, predisposition studies, of delinquent

[23] Insert appropriate political subdivision county or State.

[24] Highest court of general trial jurisdiction.

[25] Appropriate fiscal authority.

and neglected children, including supervision records of such children, shall be filed separate from other files and records of the court and shall be open to inspection only by the following:

(1) the judge and probation officers and professional staff assigned to serve the court;

(2) representatives of a public or private agency, or department providing supervision or having legal custody of the child;

(3) any other person or agency by leave of the court, having a legitimate interest in the case or in the work of the court; and

(4) the probation and other professional staff assigned to serve a criminal court, including the prosecutor and the attorney for the defendant for use in considering the sentence to be imposed upon a convicted person, who, prior thereto, had been a party to the proceedings in family court.

(b) All or any part of the records enumerated in subsection (a), or information secured from such records, when presented to and used by the judge in court or otherwise in a proceeding under this (act) shall also be made available to the parties to the proceedings and their counsel and representatives.

(c) All other court records, including docket, petitions, motions and other papers filed with a case, transcripts of testimony, finding, verdicts, orders and decrees, shall be open to inspection only by those persons and agencies designated in subsections (a) and (b) of this section.

(d) Whoever, except for the purposes permitted and in the manner provided by this section, discloses or makes use of or knowingly permits the use of information concerning a child before the court directly or indirectly derived from the records of the court or acquired in the course of official duties, upon conviction thereof shall be guilty of a misdemeanor.

COMMENT

This section protects court records from public inspection. Parties and their counsel are entitled to inspection of all legal records as well as social records which are introduced in evidence. Inspection is limited to court staff and other agencies or individuals providing care or supervision for the child, or persons having a legitimate interest in the case or the work of the court.

SECTION 46. LAW ENFORCEMENT RECORDS

(a) The court shall, by rule, require all law enforcement agencies to take special precautions to ensure that law enforcement records and files concerning a child will be maintained in such a manner and under such safeguards as will protect against disclosure to any unauthorized person. Unless a charge of delinquency is transferred for criminal prosecution under Section 31, or the court otherwise orders in the interests of the child or of national security, such records and files with respect to such child shall not be open to public inspection nor their contents disclosed to the public.

(b) Inspection of such records and files shall be permitted only by the following:

(1) a family court having the child currently before it in any proceeding;

(2) the officers of public and nongovernmental institutions or agencies to which the child is currently committed, and those responsible for his supervision after release;

(3) any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(4) law enforcement officers of other jurisdictions when necessary for the discharge of their current official duties;

(5) the probation and other professional staff of a court in which the child is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him; and

(6) the parent, guardian or other custodian and counsel for the child.

(c) Whoever, except as provided by this section, discloses, or makes use of or knowingly permits the use of information concerning a juvenile known to the police, directly or indirectly derived from police records or files or acquired in the course of official duties, upon conviction thereof shall be guilty of a misdemeanor.

SECTION 47. CHILDREN'S FINGERPRINTS—PHOTOGRAPHS

(a) Fingerprints of a child 14 or more years of age who is referred to court for an alleged delinquent act may be taken and filed by law enforcement officers investigating the commission of a felony. If the court does not find that the child committed the alleged felony, the fingerprint card and all copies of the fingerprints shall be destroyed.

(b) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the child in custody, he may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the child is under 14 years of age and referred to court, the fingerprint card and other copies of the fingerprints shall be delivered to the court for disposition. If the child is not referred to court, the print shall be immediately destroyed.

(c) If the court finds that a child 14 or more years of age has committed a felony, the prints may be retained in a local file and copies sent to a central State depository, Provided: that the court shall, by rule require special precautions to be taken to ensure that such fingerprints will be maintained in such manner and under such safeguards as to limit their use to inspection for comparison purposes by law enforcement officers or by staff of the depository only in the investigation of a crime.

(d) A child in custody shall not be photographed for criminal identification purposes without the consent of the judge unless the case is transferred for criminal prosecution.

(e) Any person who willfully violates provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor.

COMMENT

This section recognizes that fingerprints are valuable in investigating the commission of a criminal act and the police should not be handicapped by unnecessary prohibitions. This section provides for reasonable use of fingerprints and for effective protections against their misuse.

SECTION 48. SEALING OR DESTRUCTION OF RECORDS

(a) On motion on the part of a person who has been the subject of a delinquency petition or on the court's own motion, the court shall vacate its order and findings and order the sealing of the legal and social files and records of the court, probation services, and of any other agency in the case if it finds that:

(1) 2 years have elapsed since the final discharge of the person from legal custody or supervision, or 2 years after the entry of any other court order not involving custody or supervision; and

(2) he has not been convicted of a felony or gross misdemeanor involving moral turpitude, or adjudicated delinquent prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication. The motion and the order may include the files and records specified in Section 46.

(b) Reasonable notice of the motion shall be given to:

(1) the prosecutor,

(2) the authority granting the discharge if the final discharge was from an institution, parole, or probation; and

(3) the law enforcement officers, department, and central depository having custody of the files and records if the files and records specified in Section 46 are included in the motion.

(c) Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court and law enforcement officers and departments shall reply and the person may reply to any inquiry that no record exists with respect to such person.

Inspection of the files and records included in the order may thereafter be permitted by the court only upon motion by the person who is the subject of such records, and only to those persons named in the motion; provided, however, the court in its discretion may by special order in an individual case permit inspection by or release of information in the records to any clinic, hospital, or agency which has the person

under care or treatment or to individuals or agencies engaged in research.

(d) Any adjudication of delinquency or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order.

(e) A person who has been the subject of a delinquency petition and has met the conditions stipulated in subsection (a)(2), may, five years after reaching the age of majority, file a motion requesting the destruction of all records pertaining to his case. If the court grants the motion, copies of the order shall be sent to all offices or agencies that are repositories of such records and all such offices and agencies shall comply with the order.

(f) A person who has been the subject of a delinquency petition shall be notified of his rights under subsections (a) and (e) at the time of his final discharge.

COMMENT

This establishes a procedure for the sealing or destroying of court, police, probation, or other agency records when certain conditions have been met. It is somewhat similar to the Uniform Act.

SECTION 49. CONTINUANCES

Continuances shall be granted by the court only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecutor or of the child, but also the interest of the public in the prompt disposition of cases and whether the child is being detained.

COMMENT

The foregoing section is based upon Rule 1.3 of the American Bar Association's Minimum Standards for Criminal Justice Relating to Speedy Trial. The inclusion of this provision in the statute would in no way preclude the family court from promulgating court rules on the subject of continuances.

SECTION 50. CONTEMPT POWERS

Subject to the laws relating to the procedures therefor and the limitations thereon, the court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

Notwithstanding the foregoing, the court shall be limited in the actions it may take with respect to a child violating the terms and conditions of the order of protective supervision to those which the court could have taken at the time of the court's original disposition under Section 34(a).

COMMENT

This provision prevents the use of the court's contempt powers to treat a neglected child as though he had been adjudicated a delinquent child solely because the child had violated the terms and conditions of the order of protective supervision.

SECTION 51. PROCEDURE IN ADULT CASES

In any proceeding arising under Section 10, the court, with the consent of the defendant, may make a preliminary investigation and such adjustment as is practicable, without prosecution. The procedure and disposition applicable in the trial of such cases in a criminal court shall be applicable to trial in the family court. The prosecutor shall prepare and prosecute any case within the purview of Section 10.

Where in his opinion it is necessary to protect the welfare of the persons before the court, the judge, with the consent of the defendant or the parties in interest, may conduct hearings in chambers, and may exclude persons having no direct interest in the case.

SECTION 52. ADDITIONAL REMEDIES NOT PLEADED

When it appears during the course of any hearings or proceeding on delinquency or neglect that some finding or remedy other than or in addition to those indicated by the petition or motion appears from the facts to be appropriate, the court may on its own motion or on motion by the prosecutor, or that of counsel for the child, amend the petition or motion and, provided all necessary parties consent, proceed to

hear and determine forthwith the additional or other issues or findings as though originally properly sought.

SECTION 53. RULES OF COURT

The ( )[26] shall adopt; rules of procedure not in conflict with this (act) governing proceedings under this (act).

SECTION 54. APPEALS

(a) A party, including the State or a subdivision of the State, may appeal from a final order, judgment or decree of the family court to the ( )[27] by filing written notice of appeal within 30 days, or such further time as the ( )[27] may grant, after entry of the order, judgement or decree. The appeal shall be heard by the ( )[27] upon the files, records and minutes or transcript of the evidence of the family court. The name of the child shall not appear on the record on appeal.

(b) The appeal does not stay the order, judgment or decree appealed from, but the ( )[27] may otherwise order, on application and hearing consistent with the provisions of this (act), if suitable provision is made for the care and custody of the child. If the order, judgment or decree appealed from grants the custody of the child to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time. If the ( )[27] does not dismiss the proceedings and discharge the child, it shall affirm and modify the order of the family court and remand the child to the jurisdiction of the court for disposition, not inconsistent with the ( )[27] findings on the appeal.

(c) A child who has filed notice of appeal shall be furnished a transcript of the proceedings or as much of it as is requested upon the filing of a motion stating that he is financially unable to purchase the transcript.

SECTION 55. LAWS REPEALED

All laws and portions of laws relating to juvenile or family courts or any other subject dealt with in this (act), which are in conflict with the provisions of this (act), are hereby repealed. The term "juvenile court" as set forth in any existing State statute shall be deemed to mean the family court created hereby.

SECTION 56. CONSTITUTIONALITY

If any section, subsection, or clause of this (act) shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the (act).

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[26] The Supreme Court or the body having rule-making powers within the State with respect to the judiciary.

[27] Insert name of appropriate appellate court.

APPENDIX

ALTERNATIVE PROCEDURES FOR PROCESSING CRIMINAL COMPLAINTS AGAINST ADULTS

Subsections (a) and (b) of Section 10 of this (act) give the family court exclusive and original jurisdiction over criminal offenses committed against children by certain persons who have a continuing relationship with the child victim. This jurisdiction is included in order to permit coordination of the sentence in the case of the adult with the disposition of the child who may be before the court.

Section 10 also gives the family court jurisdiction over offenses committed by one spouse against the other. Such conduct as a rule indicates serious interpersonal family problems which also have an adverse effect on other members of the family, particularly children. By giving the family court jurisdiction of these cases, it may be possible to prevent further deterioration in the family relationship through the use of specialized services available to the family court.

Section 51 also permits the court, with the consent of the defendant, to make a preliminary investigation and adjustments, if possible, to obviate the need for criminal prosecution. Any action taken at this point would be purely consensual on the part of the parties. The court would have no way of enforcing any agreement or plan. In order to do this, it would have to resort to criminal prosecution.

There are those who believe that criminal proceedings, by their very nature, are not appropriate to the jurisdiction of the family court. In some cases, there is also the likelihood that such action will aggravate or intensify the problem and lead to complete family breakdown.

Therefore, an alternative is suggested which would permit the court through a civil action to exert its authority in both a preventive and remedial manner. In this way, criminal actions could be kept out of the family court. Coordination of a sentence in an adult case with the disposition of a child would still be possible by giving the criminal division, of the highest court of general trial jurisdiction, jurisdiction over such offenses.

If this approach is desired, Section 10 would have to be modified and provision for this new proceeding included in the (act). The following sections, patterned after proposed legislation relating to the District of Columbia, are included for this purpose.

PROCEEDINGS REGARDING INTRA-FAMILY OFFENSES

SECTION 1. INTRA-FAMILY OFFENSES

(a) An intra-family offense is an act punishable as a crime or offense committed:

(1) by one spouse against the other;

(2) by a parent, guardian, or other legal custodian against the child.

(b) A "complainant" or "family member" includes any individual in the relationship described in subsection (a).

SECTION 2. COMPLAINT OF CRIMINAL CONDUCT—ELECTION OF REMEDY

(a) Upon the complaint of any person or agency of criminal conduct, threat of criminal conduct, or the arrest of a person charged with criminal conduct, where it appears to the prosecutor that the conduct involves an intra-family offense, he shall refer the complainant to the Intake Office of Probation Services. The Intake Office shall conduct a preliminary inquiry to determine whether the interests of the person or persons for whose benefit the protection is sought require that a petition for civil protection be filed. The Intake Office shall make recommendations to the prosecutor as it deems appropriate.

(b) The prosecutor, after considering the recommendations of the Intake Office, may:

(1) file a criminal charge based upon the conduct, or

(2) file a petition for civil protection in the family court.

SECTION 3. PETITION NOTICE–TEMPORARY ORDER

(a) Upon the filing of a petition for civil protection, the court shall set the matter for hearing, consolidating it, where appropriate, with other matters before the court involving the same persons.

(b) The court shall cause summons to be served on the respondent, complainant, and, if appropriate, the family member endangered, or, if a child, the person then having physical custody of the child. A copy of the petition shall be attached to the summons. The court may also cause summons to be served on other members of the family whose presence at the hearing is necessary to the appropriate disposition of the matter.

(c) If, upon the filing of the petition, it appears that the safety or welfare of the family member is immediately endangered by the respondent named in the petition, the court may, ex parte, issue a temporary protection order containing any of the provisions in Section 4(c), of not more than 10 days duration and direct that the order be served along with the notice required by this section.

SECTION 4. HEARING–EVIDENCE–PROTECTION ORDER

(a) The prosecutor shall represent the State at the hearing.

(b) In a hearing under this section, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, notwithstanding the provisions of Section ( )[1] but testimony compelled over a claim of a privilege conferred by Section ( )[1] shall be inadmissable in evidence in a criminal trial over the objections of a spouse entitled to claim that privilege.

(c) If, after the hearing on the petition, the court finds that there is good cause to believe the respondent has committed or is threatening an intra-family offense, it may issue one or more of the following orders singly or in combination:

(1) direct the respondent to refrain from the conduct involved and to keep the peace toward the family member;

(2) require the respondent, alone or in conjunction with any other member of the family before the court, to participate in psychiatric or medical treatment or appropriate counseling programs;

(3) direct, where appropriate, that the respondent avoid the presence of the family member endangered;

(4) direct the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter.

(d) In making an order under subsection (c) of this section after a finding on the petition, all evidence helpful in determining the questions presented, including oral and written reports of the social service staff, may be received by the court and may be relied upon to the extent of their probative value even though not competent in a hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert oral or written reports so received and to cross-examine individuals making such reports when they are available, but sources of confidential information need not be disclosed.

(e) A protection order issued pursuant to this section and any order granting or denying extension, modification, or recision of such order shall be appealable.

(f) Any final order issued pursuant to this section and any order granting or denying extension, modification, or recission of such order shall be appealable.

(g) Violation of any temporary or permanent order issued under this section shall be punishable as contempt.

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[1]Cite appropriate Section of Code governing privilege.

PART II

TITLE A

AN ACT AUTHORIZING

A STATE ADMINISTERED PROGRAM

for the

PREVENTION AND TREATMENT OF DELINQUENCY AND NEGLECT

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SECTION 1. PURPOSE

It is the purpose of this (act) to intensify and coordinate efforts by State and local public agencies, in cooperation with voluntary agencies and organizations, citizens groups, and concerned individuals, to:

(1) take such actions as may be necessary and feasible to prevent children from becoming delinquent or neglected;

(2) develop alternative programs designed to provide care and treatment for children diverted from the juvenile justice system;

(3) preserve the unity of the family whenever and to the extent possible; and

(4) provide for the development of a statewide comprehensive program of services and facilities for the treatment of delinquent and neglected children so that they may become and remain law-abiding, productive citizens.

COMMENTS

A purpose clause gives a bird's eye view of the general objectives of the proposed legislation. After enactment, it can be of assistance in the interpretation of the various sections. However, reliance for authority to perform certain acts should not be placed on a "purpose"clause. There is no substitute for precise legislative drafting which clearly authorizes the performance of certain acts.

The word (act) is placed in parentheses throughout since the suggested language may be part of a complete Act or part of amendments to existing legislation.

SECTION 2. DEFINITIONS

As used in this (act):

(1) "aftercare supervision" means a legal status created by a court order after revesting legal custody of a child in the child's parent and permitting the child to return to his home subject to supervision and return to the court at any time during the period of supervision in situations where, previously, following an adjudication of delinquency or neglect, the child's parent had been deprived of the child's legal custody and the child had been removed from his home;

(2) "child" means an individual under the age of 18 years;

(3) "commit" means to transfer legal and physical custody;

(4) "court" means the family division of the ( );[1]

(5) "delinquent act" means an act designated a crime under the law of this State, or of another State if the act occurred in another State, or under Federal law. Traffic offenses shall not be considered delinquent acts except for violations of ( );[2]

(6) "delinquent child" means a child who has committed a delinquent act and is in need of care or rehabilitation;

(7) "department" means the (insert name of the State Department charged with the responsibility of providing services for the prevention and treatment of delinquency and neglect);

(8) "detention care" means the temporary care of delinquent children or children alleged to be delinquent in secure custody pending court disposition or transfer to a residential child-caring facility:

(9) "detention facility" means a facility in which children are provided detention care;

(10) "Division of Preventive Services" means the division in the department responsible for administering the department's program for the prevention of delinquency and the prevention and treatment of neglect;

(11) "Division of Treatment Services" means the division in the department responsible for administering the department's program for the treatment of delinquent children;

(12) "Family Court Act" means (insert reference to statutes governing jurisdiction procedures and authority of court having jurisdiction over children alleged to be delinquent or neglected);

(13) "foster family home" means (see comments);

(14) "group care facility" means (see comments);

(15) "guardianship of the person of a child" means the duty and authority to make impor-

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[1] Insert name of highest court of general trial jurisdiction.

[2] Set forth the sections of State statutes, violations of which are likely to need the specialized handling of the juvenile court, such as the so-called negligent homicide statute sometimes appearing in traffic codes, driving while under the influence of liquor or narcotics, driving without or during suspension of a driver's license, and the like.

tant decisions in matters having a permanent effect on the life and development of the child and to be concerned about his general welfare. It shall include but shall not necessarily be limited in either number or kind to:

(i) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric and surgical treatment; to represent the child in legal actions; to make other decisions of substantial legal significance concerning the child;

(ii) the authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(iii) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency or institution;

(iv) the authority to consent to the adoption of the child and to make any other decision concerning him which his parents could make, when the rights of his parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate adoption, or when both of his legal parents are deceased;

(16) "intake office" means the office by that name in the probation service in the Division of Treatment Services in the department;

(17) "legal custodian" means a person, other than a parent or legal guardian, to whom legal custody of the child has been given by court;

(18) "Legal custody" means a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom he shall live within the State, and the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court;

(19) "maintenance" means board, shelter, clothing, medical, dental and hospital care, transportation and other necessary or incidental expenses for care, or any of them, or money payments therefor;

(20) "neglected child" means a child:

(i) who has been abandoned by his parents, guardian, or other custodian;

(ii) who is physically abused by his parents, guardian or other custodian or who is without proper parental care and control necessary for his well-being because of the faults or habits of his parents, guardian, or other custodian or their neglect or refusal, when able to do so, to provide them; or

(iii) whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child; or

(iv) who has been placed for care or adoption in violation of law and

(v) in any of the foregoing is in need of care or supervision.

(21) "Office of Prevention and Treatment" means the office in the department responsible for the department's program for the prevention and treatment of delinquency and neglect;

(22) "probation" means a legal status created by court order following an adjudication of delinquency whereby a child is permitted to remain in his home subject to supervision and return to the court for violation of probation at any time during the period of probation;

(23) "probation services" means those services provided the court by the Division of Treatment Services in the department, which include making preliminary investigations, predisposition studies, reports and recommendations to the court, receiving and examining complaints, making referrals to the community agencies, supervising children placed on probation, and performing all other functions required by this (act) or any other law;

(24) "residential child caring facility" means a dwelling, other than a detention or shelter care facility, providing living accommodations, care, treatment and maintenance for children, including institutions, foster family homes, group homes, half-way houses, forestry camps and, where not operated by a public agency, is licensed or approved to provide care.

(25) "residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of

legal custody or guardianship of the person, including but not necessarily limited to the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support;

(26) "runaway child means a child who has run away from such child's residence or normal place of abode, whether within or outside this State, without the consent of such child's parent, guardian or other custodian;

(27) "Secretary" means the Executive Head of the Department;

(28) "shelter care" means the temporary care of children in physically unrestricting facilities pending court disposition;

(29) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this (act).

COMMENT

Many of these definitions are identical to those set forth in the FAMILY COURT ACT, PART I, *supra*, and referred to in the text and comments of this PART as the Family Court Act.

Subsection (13) should be completed in accordance with the definition of comparable terms ("foster home," "family home," "boarding home," etc.) in the related State laws, such as those dealing with the licensing of organizations and individuals caring for children. These vary from State to State but, in general, licensing laws define a "foster family home" as a private home which cares for a specified maximum number of children (generally not more than four or six), under a certain age, who are not related to the foster parent by blood, marriage or adoption. Some laws limit the home so defined to those receiving compensation for the care provided.

Subsection (14) is intended to define a group home operating as an entity in a community to furnish living arrangements for a group larger than is accommodated in a foster home but smaller usually 7 to 12 individuals—than an institution providing care and treatment for large numbers of individuals. Consideration should be given to definitions of different types of group care facilities in related State laws.

SECTION 3. GENERAL DUTIES OF DEPARTMENT—PROGRAM DEVELOPMENT WITH RESPECT TO THE PREVENTION AND TREATMENT OF DELINQUENCY AND NEGLECT

The department shall develop a statewide comprehensive program for the prevention and treatment of delinquency and neglect, and for the provision of care and treatment of delinquent children, and in addition, to any other duties and functions vested in it by this or any other (act).

(a) Collect and evaluate, and assist local communities to collect and evaluate, statistics, information, and data relating to:

(1) The nature, extent, and causes of, and conditions contributing to, the delinquency of children;

(2) The existence and effectiveness of all such programs and the need for strengthening them or initiating new programs for such purposes.

(b) Encourage and assist in the development and conduct of innovative programs for children diverted from the juvenile justice system, to the extent that such diversion can be safely accomplished with due regard to the safety of the community and the well-being of the children involved, and for the provision to them of the care and services they need outside such system, to prevent them from becoming a part of or returning to such system.

(c) Adopt and implement the most effective means of making available to the public and to appropriate public and voluntary agencies and organizations throughout the State the information thus collected and evaluated.

(d) Exercise leadership on behalf of the State in the development of written instructional, informational, and standard-setting materials relating to such programs and provide consultative services to other State agencies and to other public and voluntary agencies and organizations with respect thereto.

(e) Enlist the participation of citizens' organizations, individual citizens, and representatives of State and local private and public agencies in the planning and development equally throughout the State of efficient, effective programs.

(f) Cooperate with and assist, within the scope of its functions and duties as provided by

law, other public and voluntary agencies and organizations in the development and coordination of such programs.

(g) Promote and assist, to the maximum extent possible, in the development, expansion and operation of community based programs.

COMMENT

This section is phrased broadly so as to sketch in the outlines of the overall powers and duties of the department, with the specifics to be filled in by later sections.

SECTION 4. DUTIES OF DEPARTMENT WITH RESPECT TO PROVISION OF TECHNICAL ASSISTANCE

The department is authorized, either directly or through grants to or contracts with any public or private agency or organization, to render technical assistance to local agencies in the development of new or improved techniques and practices which hold promise of making a substantial contribution to the prevention and treatment of delinquency and neglect, including techniques and practices for the training of personnel and the evaluation of programs for the prevention and treatment of delinquency and neglect.

COMMENT

When services for the prevention and treatment of delinquency and neglect are part of the functions of an existing State department carrying out other functions and duties, the language suggested in this section should be related to, or be a part of, comparable provisions for the department as a whole.

SECTION 5. DUTIES OF DEPARTMENT WITH RESPECT TO RESEARCH

The department is authorized to make provision for the conduct of research, including studies and demonstration projects, into all aspects of the problems relating to the causes, prevention, and treatment of juvenile delinquency and neglect, either directly or by entering into contracts with or making grants to State or local public agencies, or private agencies, organizations, or individuals for paying all or part of the costs of carrying out such research, including the evaluation of any demonstration projects undertaken.

COMMENT

When services for the prevention and treatment of delinquency and neglect are part of the functions of an existing State department carrying out other functions and duties, the language suggested in this section should be related to, or be a part of, comparable provisions for the department as a whole.

SECTION 6. DUTIES OF DEPARTMENT WITH RESPECT TO PERSONNEL TRAINING PROGRAMS

(a) The department, pursuant to regulations promulgated by it, shall establish comprehensive training programs for persons employed by it or to be employed by it in carrying out the provisions of this (act) and for persons employed or to be employed by agencies and organizations, both public and private, engaged in activities relating to the prevention and treatment of delinquency and neglect.

(b) As part of such programs, the department may develop and conduct, or assist in developing and conducting, relevant courses of study in schools, colleges, and universities, short-term training institutues, and in-service training courses and may establish pertinent traineeships for professional, para-professional and indigenous workers.

(c) The department may carry out such programs directly or through grants or contracts to cover the whole or part of the costs of program projects, including the costs of stipends and tuition, allowances for travel and subsistence expenses and, with respect to employees of the department granted leave to undertake approved training, continuation of the salaries and other benefits of such employees.

COMMENT

When services for the prevention and treatment of delinquency and neglect are part of the functions of an existing State department carrying out other functions and duties, the language

suggested in this section should be related to, or be a part of, comparable provisions for the department as a whole.

SECTION 7. COOPERATION BY OTHER STATE DEPARTMENTS AND AGENCIES

To effectuate the purposes of this (act), to achieve the most effective use and coordination of State programs relating to or affecting the prevention and treatment of delinquency and neglect, and to assure the maximum use of existing facilities, services and personnel, it shall be the duty of all departments and agencies of the State government and of all officers and employees of the State, when and to the extent requested by the department, to cooperate with it in all its activities consistent with their proper functions.

COMMENT

While requiring all other departments, agencies, officers, and employees of the State to assist the department upon request, this section also recognizes the limits under which they may legally act. The suggested language would not be open to the construction that they are being called upon to do something which other statutes prohibit them from doing or which is inconsistent with their functions.

On the other hand, a section such as this is important as an additional tool in achieving the overall objective of the (act) or avoiding or minimizing the all too frequent uncoordinated dissipation of State efforts in this field.

SECTION 8. DUTIES OF DEPARTMENT WITH RESPECT TO FUNCTIONS OF THE ( )[3]

The Secretary shall:

(a) be a member of the (State Law Enforcement Planning Agency), hereinafter in this section called the "Agency";

(b) participate in the development and revision of those phases of the State's comprehensive plan for law enforcement which relate to the prevention of juvenile delinquency and the provision of care and treatment of delinquent children;

(c) advise the Agency as to whether specific projects, and amendments thereto, submitted to such Agency for funding under such plan would be consistent with and assist materially in achieving the objectives of such plan.

COMMENT

Under the Federal "Omnibus Crime Control and Safe Streets Act of 1968" (P.L. 90-351, as amended) Federal grants are made to a State to be utilized by it "to establish and maintain a State planning agency . . . created or designated by the chief executive of the State . . . representative of law enforcement agencies of the State and of the units of general local government within the State." The State Planning Agency is required to develop a "comprehensive statewide plan for the improvement in law enforcement" and "define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement of law enforcement."

Every State has now established such a State Planning Agency, denominated in various ways. For purposes of this section, such agency has been called the "State Law Enforcement Planning Agency."

Because of the crucial role contemplated for the department under these suggestions in the prevention and treatment of delinquency, the essentiality of the department's being a member of the State Planning Agency seems obvious.

Equally essential should be the need for the full and active participation of a department carrying out comprehensive functions such as those contemplated under these suggestions not only in the development of those phases of the State's plan dealing with the prevention and treatment of delinquency but also in the review of projects in such field submitted to the State Planning Agency for funding. Again, instances have been found in which such a department in some States has not been consulted with respect to the funding of important, far-reaching projects dealing with vital functions of the department in this field. The inevitable results are confusion and overlapping of activities, the dissipation of already inadequate professional

[3]Insert name of State Law Enforcement Planning Agency required under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, as amended).

resources, and the waste of Federal, State and local funds.

It is to avoid these undesirable results that the provisions in this section have been suggested.

The proposal has been advanced that the department be given an absolute veto not only over those sections of the comprehensive State plan relating to the prevention and treatment of juvenile delinquency, but also that it exercise such a veto over the funding of proposed projects in that field.

As drafted, the language of this section does not vest in the department such a veto. However, it does require that the department be consulted with respect to matters falling within its functions and duties.

SECTION 9. REPORTS BY THE DEPARTMENT

The department shall:

(a) Make a full and complete report annually to the Governor with respect to its activities under this (act) and containing recommendations:

(1) as to the fiscal, administrative or legislative measures necessary to extend and strengthen the State's program for the prevention of delinquency and neglect and for the care and treatment of neglected and delinquent children, and

(2) as to changes needed in current policies and systems of providing services to children by State and local public and private social agencies, schools, employment services, health and mental health and juvenile justice agencies as are needed to eliminate or modify those policies or aspects of such systems which have an adverse impact upon children or prevent effective delivery of services;

(b) transmit a copy of such report to the Legislature;

(c) take such action as may be necessary and desirable to bring the contents of such report to the attention of the people of the State; and

(d) make such additional reports and recommendations to the Governor as he may from time to time request or as the department may deem warranted.

SECTION 10. REFERRALS FROM FEDERAL GOVERNMENT

The department is authorized to serve as an agent of the State in entering into agreements with the appropriate agency of the Federal Government to provide care and treatment for a child found by a Federal court to be delinquent and committed to the custody of the Attorney General of the United States pursuant to the provisions of 18. U.S.C. 5031-5037, incl., as amended.

Such agreement shall be upon such terms and conditions and shall provide for such compensation as may be mutually agreed upon between the department and the appropriate agency of the Federal Government.

Funds received as compensation under such agreement shall be placed in the State treasury and are hereby appropriated for the use of the department for carrying out the purposes of this (act).

COMMENT

The department should have sufficient authority with respect to intake to accept, at its discretion, the placement with it of a child found to be delinquent by a Federal court. The types of children to be accepted, the terms of such placements, the amounts of reimbursement for the care and treatment provided, and other such details should not be specified in the (act), but should be worked out in agreement between the two governments.

Specific provision for appropriating for the department's use any funds received in payment for care and treatment obviates the necessity of repeatedly including similar language in annual or biennial appropriation acts.

SECTION 11. RECEIPT OF FEDERAL FUNDS

The department is authorized to enter into arrangements with the Federal Government for the receipt of Federal funds to carry out the purposes of this (act) and, for the achievement of that objective, may enter into contracts and agreements with and submit such plans and reports to the Federal Government as may be required and which are not contrary to the provisions of this or any other (act).

COMMENT

This section is broadly worded so as to permit the receipt of Federal funds not only under

programs in existence at the time of its enactment but also under programs subsequently coming into being.

In recent years, some States have imposed restrictions on the use and receipt of Federal funds, providing some method of intra-state clearance before an application can be made for Federal funds. In such States, therefore, this suggested language would require modification to take into account such State procedures.

SECTION 12. ESTABLISHMENT OF OFFICE OF PREVENTION AND TREATMENT

There is hereby established in the department an Office of Prevention and Treatment which shall be under the supervisory control of a (Title) who shall be appointed by the Secretary in the same manner and who shall receive the same compensation as the (Titles) of other (offices) of the said department. The Office of Prevention and Treatment shall consist of at least a Division of Preventive Services and a Division of Treatment Services, and such other Divisions and organizational units as may from time to time be established. All employees of the Office of Prevention and Treatment shall be selected, appointed, promoted and compensated in accordance with the provisions of the (State Merit System). The Office of Prevention and Treatment shall be responsible for carrying out all of the functions, duties and responsibilities vested in the department by this (act), by the (Family Court Act)[4] and as may be delegated to it by the Secretary.

COMMENT

The suggestions as to structure and titles contained in this section and in Sections 13 and 14 are illustrative of the recommendations contained in the principles set forth at the outset of these materials with respect to the separation of the functions of delinquency prevention from those of treatment.

SECTION 13. ESTABLISHMENT OF DIVISION OF PREVENTIVE SERVICES

(a) There is hereby established in the Office of Prevention and Treatment a Division of Preventive Services which shall be under the direction of a Director and which shall be responsible for carrying out all the functions, duties and responsibilities vested in the department by this (act) with respect to the prevention of delinquency including programs for neglected and runaway children.

(b) The Division of Preventive Services shall exercise statewide responsibility and leadership in the development, organization, support and coordination of innovative community programs for the prevention of juvenile delinquency and for children diverted from the juvenile justice system.

(c) In carrying out the provisions of this section, the Division of Preventive Services shall enter into cooperative, continuing arrangements with other State and local public agencies and private nonprofit organizations providing or able to provide welfare, education, health, mental health, recreation, job training, or other basic services in the community for children.

(d) In establishing, administering or supporting preventive programs under this (act), the Division of Preventive Services may provide for such services and programs directly or through grants to or contracts with any State or local public or nonprofit private agency.

SECTION 14. ALTERNATIVE PROGRAMS FOR CHILDREN DIVERTED FROM JUVENILE JUSTICE SYSTEM

(a) The Division of Preventive Services shall accept and investigate all complaints, including those received from children, alleging that a child is neglected and if, after such investigation, the Division of Preventive Services concludes that there are reasonable grounds to believe that the allegations are substantially accurate, the Division of Preventive Services shall be authorized to proceed as provided in subsections (b), (c) and (d) of this section.

(b) The Division of Preventive Services shall offer to provide a child foster care and social, health, or educational services as may be needed by the child or the child's parents, guardian, or other legal custodian, or by both, and if they agree, provide them with such services or care directly or through some other public or private agency as long as necessary to attain a reasonable resolution of the problem. *Provided, That,*

[4]Insert appropriate legislative references.

if within the last 6 months the child or parents have refused services offered by the department as a result of a previous complaint or terminated an agreement or withdrew from a service program contrary to the recommendations of the department, the department may forthwith file a complaint in court alleging neglect where there is reason to believe that the child is in need of care or service.

(c) Upon the refusal of the child or of the parents, guardian, or other legal custodian of such child, or both, to agree to accept needed services or care, the Division of Preventive Services shall, if it has reason to believe that the facts clearly support the need for such service or care, file a complaint with the intake office of probation services alleging that the child is neglected.

(d) If the child, or the parents, guardian or legal custodian, or both, by their actions or otherwise terminate the agreement and withdraw from the program in spite of the need for continued service or care as recommended by the Division of Preventive Services, the Division shall file a complaint with the intake office of probation services alleging that the child is neglected.

(e) Any agreements entered into pursuant to this section shall be subject to the provisions of Sections 58 and 60 of this (act).

(f) Any person or any agency or employee thereof providing information to the Division of Preventive Services under this section or participating in a judicial proceeding resulting therefrom and the Division of Preventive Services and its employees shall be immune from any civil or criminal liability, in the absence of proof of malice, which might otherwise be incurred or imposed in connection with the furnishing of such information or the participation in such proceedings.

(g) For the purposes of this section, a child under the age of (14) years shall be deemed to have given consent to the provision of needed services if the parents, guardian or other legal custodian of such child agree thereto.

(h) Sections 48 through 51, inclusive, of this (act) shall apply to all information and records involved in the administration of this section.

(i) The services and care necessary to implement alternative programs required by this section shall be provided directly by the department or through grants to local public agencies based upon relative needs of the local community to be determined by a formula or any other equitable means of funding established by departmental regulations.

COMMENT

As used in this (act), "to divert" means the referral of a child prior to the filing of a petition to a community agency or facility which is not part of the juvenile justice system.

If diversion of children from the juvenile justice system is to become a reality, alternative programs to provide service or care for these children must be developed, supported, operated and administered separate and apart from the juvenile justice system. It is the intent in subsection (i) to mandate the development of alternative programs. The factors to be considered in a formula may vary depending upon the data available in the State. For example, one factor may be the number of children in the community 10 through 17 years of age. Other factors may be the incidence or rate of school dropouts or youth unemployment. As the rate of diversion increases, the decreasing burden upon the juvenile justice system may permit the reallocation of some funds for alternative programs.

In subsection (g), the age at which a child's preference should be given recognition will vary as to the issue under consideration and State law.

SECTION 15. POWERS AND DUTIES OF DEPARTMENT WITH RESPECT TO RUNAWAY CHILDREN

(a) The department, directly or through grants to or contracts with public or nonprofit private agencies and organizations, shall establish and administer, or supervise the administration of, a coordinated statewide system of services for runaway children which shall be administered in accordance with regulations promulgated by the department and which shall be designed to assure that:

(1) when it is determined that a child is eligible for services under the system as a runaway child and is not a child acting contrary to any court order, as described in subsection (b) of this section, the parents of such child shall be promptly notified, by the most expeditious

means possible, of the child's condition and of the fact that the child is receiving services, *Provided*, That, notwithstanding any other provision of law, upon the request of a child (14) years of age or older, the child's geographic location or the name and location of the agency or organization providing the services need not be disclosed to the parents of such child for a period of not to exceed (48) hours after the commencement of the provision of services for such child, *Provided Further, That*, the parents of such child shall be informed that such information is being withheld at the child's request;

(2) a review of the child's home situation is undertaken or caused to be undertaken without delay and if the child desires to return home, if the parents are willing to accept the return of the child to the child's home and if there are reasonable grounds to believe that the child's parents are capable of providing the child with necessary care and supervision, the child shall promptly be returned to such child's home;

(3) in any case where there are reasonable grounds to believe that a runaway child is in need of continuing care and service and where a consent agreement for the provision of the needed services cannot be mutually agreed upon within (72) hours after the commencement of the provision of services to such child, the department or other authorized agency shall file a neglect complaint in accordance with the provisions of Section 14 of this (act).

(b) Notwithstanding the provisions of subsection (a) of this section, if it is ascertained at the initial interview to determine the child's eligibility to receive services under this program that the child has run away from a residential child-caring facility to which the child was committed or from a detention or shelter care facility or that such child is otherwise acting contrary to any other court ordered supervision of such child, the department or other authorized agency shall promptly notify the appropriate authorities of the whereabouts of such child and shall promptly take all appropriate steps, pursuant to this (act), the (Family Court Act) or the Interstate Compact on Juveniles, to cause such child to be returned safely to the care, custody and control of such child's parents, guardian or other legal custodian.

(c) At the initial interview to determine the eligibility of a child to receive services under this program, the child is fully informed of the procedures and conditions attached to the provision of such services as well as of the rights of such child under this (act), the (Family Court Act[5] or the Interstate Compact on Juveniles.

COMMENT

The recommendations contained in this section set forth a new approach to the problem of dealing with the growing problem of runaways outside the juvenile justice system.

At present, in most States, a runaway child can be adjudicated a delinquent child and one who harbors and provides shelter for such child runs the danger of being charged with and found guilty of contributing to the delinquency of such child. It should be noted that, unless it is otherwise provided by law, the parent or guardian of such child has the legal right to the legal custody of the child, irrespective of the reason which the child may advance for leaving home.

The problem is how shelter care can be provided, at least for a temporary period and outside the juvenile justice system, for a runaway child who requests or is referred for such care without the knowledge or consent of the child's parent or guardian, without subjecting the person or agency to possible criminal prosecution for contributing to the delinquency of such child.

A further complication of the problem is the frequent reluctance of such runaway children to seek assistance from traditional public agencies either within or outside the juvenile justice system.

In the operations observed, these problems have not been satisfactorily resolved. Some seem to be totally unaware of the legal pitfalls attendant upon their operations. Others are aware of the legal dangers and although concerned, continue their operations by having present some official representative of the juvenile justice system—a police or probation officer—on a supposedly "unofficial" basis.

The latter solution raises as many problems as it seeks to solve. Serious question can be raised as to whether a police officer or, under certain circumstances, a probation officer, can legally ignore the continued care being given a runaway,

[5]Insert appropriate legislative references.

even though such officer is supposedly at the place of operations in an "unofficial" capacity. On the other hand, the mere presence of such officer cloaks the total operation with an aura of officialdom which inhibits the runaway from freely seeking assistance.

The suggestions made in this section seek to overcome these problems in a practical manner while adhering firmly to accepted legal principles.

Under the recommendations contained in this section, the department or its designated agency would be enabled to provide emergency shelter care for a limited period of time pursuant to authority vested in it by this section. So long as the agency adhered to departmental regulations in its activities with respect to runaways, it would not be subject to prosecution for contributing to the delinquency of a minor.

This section also recognizes the fact that the mere provision of emergency shelter care is not a means of resolving the longterm needs of the child. It therefore places certain duties upon the department with respect to seeking to meet those needs outside of the juvenile justice system either through an agreement with the child and the parent or guardian of such child relating to the provision of services on a voluntary basis or through seeking the appointment of a legal custodian or guardian of the person of such child.

Since one objection of the service is to alleviate the fears and concerns of parents and to conserve the time of law enforcement officers, the parents should be notified as soon as possible that the child is under care. Where an older child is adamant about informing his parents of his whereabouts, a period of time should be allowed in order to assist the child to resolve this issue. In any event, an outside limit should be placed upon the period that temporary maintenance can be provided a runaway child, in the absence of a consent or valid agreement by parents and child without referral to court. The bracketed age and hours in brackets are suggested as being reasonable.

SECTION 16. ESTABLISHMENT OF DIVISION OF TREATMENT SERVICES

(a) There is hereby established in the Office of Prevention and Treatment, a Division of Treatment Services which shall be under the direction of a Director of Treatment Services and which shall be responsible for carrying out all the functions, duties and responsibilities vested in the department with respect to the provision of care and treatment for children who are alleged to be or who are found to be delinquent.

(b) The Division of Treatment Services shall exercise statewide responsibility and leadership in the development, organization, support and coordination of innovative community-based programs for the treatment of delinquency.

(c) In carrying out the provisions of this section, the Division of Treatment Services shall enter into cooperative, continuing arrangements with other State and local public agencies and private nonprofit organizations providing or able to provide welfare, education, health, mental health, recreation, job training, or other basic services in the community for children.

(d) In establishing, administering or supporting treatment programs under this (act), the Division of Treatment Services may provide for such services and programs directly or through grants to or contracts with any State or local public or nonprofit private agency.

SECTION 17. PROBATION SERVICES—DIRECTOR OF PROBATION—PROBATION OFFICERS—INTAKE BRANCH

(a) There is hereby established in the Division of Treatment Services, under the control of the Director, an organizational unit to be known as Probation Services which shall be in charge of a Director of Probation and which shall consist of Probation Officers, other social service personnel, and such other employees as may be necessary to carry out the functions, duties and responsibilities vested in the department with respect to the provision of probation and other clinical services for children referred to and under the jurisdiction of the court in accordance with the provisions of this (act) and the (Family Court Act).[6]

(b) There is hereby established within the Probation Service an Intake Branch for the performance of those functions specified in this

[6]Insert appropriate legislative references.

(act) and in the ( )[6] to be performed by such Branch and such other functions and duties as may from time to time be delegated to such Branch.

COMMENT

All the titles of personnel and the names of the organizational units used in this (act) are suggestive only, since these are traditionally matters which differ from State to State according to usage.

It has been recommended (Family Court Act, PART I, *supra*), that probation services be established on a statewide basis as part of the executive branch of government. This and the preceding section set forth a suggested organizational structure of such a statewide service.

As a matter of legislative drafting technique and in the interests of clarity, provisions relating to the powers, duties and functions of the probation service, the Director of Probation, the Intake Branch, Probation officers and other casework and clinical personnel should more appropriately be set forth; in the statutes relating to the Family Court. For such provisions see: "Family Court Act," PART I, *supra*

SECTION 18. STATEWIDE SYSTEM OF DETENTION CARE FACILITIES

(a) The department shall establish, administer and operate a statewide system of detention care facilities for delinquent children or children alleged to be delinquent referred to or under the jurisdiction of the court.

(b) In order to provide for the orderly transition to such a statewide system of detention care facilities, the department may enter into arrangements with the agencies administering existing detention care facilities for their continued administration in the same manner and under the same auspices as heretofore on a cost reimbursable basis until not later than ( ).[7]

(c) The department may, as a means of establishing the statewide system of detention care facilities contemplated by subsection (a) of this section, arrange to purchase any of the existing detention care facilities it determines to be necessary for such system.

(d) After ( )[7] no child referred to or under the jurisdiction of the court, as a delinquent child, shall be detained in any facility other than a detention care facility operated by the department.

COMMENT

Although it is recommended that the provision of detention care be a State responsibility, some communities may wish to provide and operate their own detention care facility. Such an option can be provided by adding a subsection to this section. If, however, this option is included, the locally administered detention facility should be required to conform to standards promulgated by the department. Authority for the promulgation of such standards can be added to Section 20 "Standards for Shelter Care Facilities—Approval."

SECTION 19. DEVELOPMENT OF STATEWIDE SYSTEM OF APPROVED SHELTER CARE FACILITIES

(a) The department shall develop a statewide system of approved facilities for the provision of shelter care for children referred to or under the jurisdiction of the court or of the department.

(b) The department may, as a means of establishing the statewide system of shelter care facilities required by subsection (a) of this section, arrange to purchase any existing shelter care facilities it determines to be necessary for such system.

SECTION 20. STANDARDS FOR SHELTER CARE FACILITIES APPROVAL

In the development of a statewide system of shelter care facilities pursuant to the provisions of Section 19 of this (act), the department, with respect to such facilities not operated by the department, shall:

(a) by regulation, promulgate required program standards for shelter care facilities. Such standards shall govern such matters as the location, design, construction, equipment, and operations, including, but not limited to, the

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[7] Specify age.

services to be provided, the capacity of the facility, the qualifications and numbers of personnel to be employed, and the financing of such facilities, *Provided*, *That*, such standards shall require adherence to the provisions of Sections 47-49, inclusive of this (act) with respect to the making, maintenance and confidentiality of records; and

(b) approve such shelter care facilities as the department finds, on the basis of information submitted to it and such investigations as the department deems necessary, substantially meet promulgated standards.

SECTION 21. FINANCIAL ASSISTANCE FOR LOCAL SHELTER CARE FACILITIES

(a) The department shall by regulation establish an equitable system of financial assistance by the department to towns, cities, and counties for sharing the costs of providing approved shelter care facilities.

(b) Financial assistance shall be available hereunder only with respect to shelter care facilities which the department determines are needed and which meet and maintain the standards promulgated pursuant to Section 20 of this (act).

(c) Financial assistance made available hereunder may be calculated on the basis of per capita payments for shelter care provided in individual cases or on the basis of a subsidy paid for the maintenance of such facilities in readily available status, or on the basis of a combination of both methods, as is best designed to effectuate the establishment and maintenance of the statewide system of shelter care facilities required by the provisions of Section 19 of this (act).

COMMENT

This section seeks to set the broad outlines for the direction in which the statewide system of shelter care facilities should be developed.

It should also be noted that the financing powers granted to the department in subsection (c) are intended to be sufficiently broad so as to enable it to use financial incentives to bring into existence the best possible system of shelter care facilities.

SECTION 22. CONSTRUCTION AND OPERATION OF SHELTER CARE FACILITIES BY DEPARTMENT—ANNUAL EVALUATIONS OF OPERATIONS

(a) The department is authorized, where it determines that adequate shelter care facilities cannot otherwise be provided pursuant to Section 19 of this (act) and that such facilities are needed effectively to implement the statewide system of such facilities required by the provisions of Section (19) of this (act), to construct and operate such needed shelter care facilities, *Provided*, *That*, all shelter care facilities operated by the department shall be considered to be approved facilities within the meaning of this (act) and shall be operated by the department in accordance with the standards promulgated by the department pursuant to the provisions of Section 20 of this (act).

(b) The department shall annually provide for an evaluation and written report on shelter care facilities operated by the department, particularly in relation to conformance with the standards for similar facilities promulgated by the department pursuant to the provisions of Section 20 of this (act), to be made by a person, persons, agency, or organization independent of the department and having knowledge and experience with respect to the operation of shelter care facilities. The report shall be published and copies thereof transmitted to the Governor and the Legislature.

COMMENT

In addition to the authority contained in this section to construct and operate shelter care facilities necessary to "round out" the statewide system authorized by Section 19, the language requires that whatever facilities are operated by the department must comply with the standards promulgated for the operation of facilities not operated by the department and that department-operated facilities should be evaluated annually through an independent evaluation to be given wide distribution.

In the case of such facilities not operated by the department, the sanction provided (see Section 24) for non-compliance with the promulgated standards is the suspension or revocation of the approval of such facilities; the

sanction with respect to State-operated facilities is public opinion. This device seeks to avoid the anomalous situation where the standard of care and treatment in State-operated facilities can, with impunity, be maintained at a standard lower than that in approved facilities.

SECTION 23. REQUIRED INSPECTIONS AND REPORTS—APPROVED SHELTER CARE FACILITIES

The department shall, with respect to all approved shelter care facilities other than those operated by the department:

(a) cause an on-site inspection to be made at least once every ( ) months of such facilities and their operations; and

(b) require the submission at least annually by such facilities of periodic written reports containing such information concerning their operations as the department shall by regulation require.

COMMENT

This imposes by statute certain specific duties upon the department with respect to insuring that approved facilities continue to meet the established standards.

In determining how often the inspections required by this section are to be made, it should be borne in mind that there will be a tendency to make such inspections no more frequently than the time specified. On the other hand, the frequency of such inspections should be specified in the light of the burden placed upon the department.

SECTION 24. SUSPENSION—REVOCATION—APPROVAL OF SHELTER CARE FACILITIES

(a) Whenever the department shall have reason to believe that an approved shelter care facility no longer complies substantially with the standards promulgated by the department pursuant to Section 20 of this (act), the department shall cause to be delivered to such facility a written notice setting forth the areas of non-compliance and a time certain within which substantial compliance with such standards should be attained.

(b) If, after the expiration of such time certain, the department has reason to believe that such facility still does not comply substantially with such standards, the department shall notify such facility in writing of an opportunity to be heard with respect to the allegations of non-compliance.

(c) If, after affording such facility a reasonable opportunity to be heard, the department finds, on the basis of all the facts available to it, that such facility fails to comply substantially with such standards the department shall:

(1) suspend its approval of such facility until it shall have substantially complied with such standards; or

(2) revoke its approval of such facility if the department further finds that there is no reasonable expectation of substantial compliance with such standards within a reasonable time.

(d) Notice of the finding by the department suspending or revoking its approval of a shelter care facility shall be promptly delivered in writing by the department to the court, to the appropriate law enforcement agencies, and to such other individuals or agencies as have reason to be informed of such action.

COMMENT

This section spells out the legal safeguards which should surround the department's refusal to approve or the suspension or revocation of an approval of a shelter care facility in order to prevent unreasonable, arbitrary, or capricious action on the part of the department.

It should be noted that failure to comply must be substantial in order to invoke the sanctions provided by this section.

SECTION 25. APPEALS FROM DECISIONS BY DEPARTMENT REFUSING TO APPROVE OR SUSPENDING OR REVOKING APPROVAL OF SHELTER CARE FACILITY

The action of the department in refusing to approve or in suspending or revoking the approval of a shelter care facility shall be subject to review by appeal to the ( )[8] *Provided*,

[8]Insert name of appropriate court.

That, unless otherwise ordered by such court, the action of the department shall not be stayed or reversed pending the outcome of such appeal.

COMMENT

This section specifically provides that the action of the department is not to be suspended pending the outcome of the judicial appeal, unless the court orders otherwise. This proviso has been inserted because children are being held in such shelter care facility and the allegation has been made—and proven to the satisfaction of the Secretary of the department—that such facility is being operated at a standard substantially below that required by the department.

SECTION 26. LIMITATIONS ON THE PROVISION OF CERTAIN FACILITIES FOR DETENTION OR SHELTER CARE

The department shall not provide detention or shelter care for:

(a) a child alleged to be delinquent in a facility used for the care and treatment of children adjudicated delinquent, other tnan those who, after having been adjudicated delinquent, are in such facility only for a period not to exceed (48) hours pending transfer to another facility;

(b) a child found to be neglected, unless also found to be delinquent, in a facility for the detention of children alleged to be delinquent, or for the care and treatment of children adjudicated delinquent.

SECTION 27. PROHIBITIONS WITH RESPECT TO PROVISION OF SHELTER CARE

(a) After ( )[9] it shall be unlawful to provide care for any child in any shelter care facility other than one operated or approved by the department in accordance with the provisions of this (act).

(b) It shall be unlawful to place any child or to continue the placement of any child in a facility the approval of which has been suspended or revoked by the department.

(c) After ( )[9] it shall be unlawful to provide detention or shelter care services for any child contrary to the provisions of subsections (a) or (b) of Section 26 of this (act).

COMMENT

This section complements similar limitations on the use of detention and shelter care facilities provided for under the Family Court Act.[10] The limitations set forth in this section apply, however, to actions by the department. The date fixed should be one which takes into consideration the time which will be required to establish a system for the approval of detention and shelter care facilities. The dates need not necessarily be the same.

SECTION 28. DEVELOPMENT OF STATEWIDE SYSTEM OF RESIDENTIAL CHILD CARING FACILITIES

The department shall develop, or assist in the development of, a system of community-based residential child caring facilities which shall meet the standards for licensure and be licensed pursuant to the provisions of ( ),[11] and which shall:

(a) be designed for the provision of residential care and treatment of children whom the court has adjudicated delinquent or neglected and vested their legal custody in the department, or for children accepted on a voluntary basis through agreement; and

(b) be of various types so as to meet the particular needs of such children to the maximum extent possible in their own communities, including but not limited to foster family homes, group homes, forestry camps, half-way houses, and emergency maintenance.

COMMENT

This section assumes the existence of statutory licensing requirements for residential child caring facilities along the lines of those suggested for approved shelter care facilities.

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[9] Specify date.

[10] See PART I.

[11] Insert reference to appropriate licensure statutes.

The thrust is toward the development not only of a diversified system of such facilities but also toward a reversal of the trend toward large institutions and in the direction of small facilities located in the child's home community.

SECTION 29. INSPECTIONS AND REPORTS—RESIDENTIAL CHILD CARING FACILITIES

The department shall, with respect to all residential child caring facilities which it uses:

(a) provide for an on-site inspection at least every ( ) months of such facilities and their operations; and

(b) require the submission by such facilities of periodic written reports containing such information concerning their operations as the department shall by regulation require.

COMMENT

In determining how often the inspections required by this section are to be made, it should be borne in mind that there will be a tendency to make such inspections no more frequently than the time specified. On the other hand, the frequency of such inspections should be specified in the light of the burden placed upon the department.

SECTION 30. FINANCIAL ASSISTANCE FOR LOCAL RESIDENTIAL CHILD CARING FACILITIES

(a) The department may, by regulation, provide financial assistance to local public, or private non-profit agencies or organizations, for paying all or part of the costs of constructing or operating, or both, of residential child caring facilities in such manner as to encourage the development of the statewide system of such facilities contemplated by Section 28 of this (act).

(b) Financial assistance shall be available hereunder only with respect to residential child caring facilities which the department determines are needed and which, if public, meet and maintain standards for licensure or, if under private auspices, are licensed.

SECTION 31. CONSTRUCTION AND OPERATION OF RESIDENTIAL CHILD CARING FACILITIES BY DEPARTMENT EVALUATIONS OF OPERATIONS

(a) The department is authorized, when it determines that adequate residential child caring facilities cannot be provided otherwise pursuant to the provisions of Section 28 of this (act) to construct and operate residential child caring facilities, *Provided*, *That*, all residential child caring facilities operated by the department shall be considered licensed residential child caring facilities within the meaning of this (act), and shall be operated by the department in accordance with the standards promulgated by the ( ).[12]

(b) The department shall annually provide for an evaluation and written report on residential child caring facilities operated by the department, particularly in relation to conformance to licensing standards to be made by a person, persons, agency, or organization independent of the department and having knowledge and experience with respect to the operation of residential child caring facilities and shall publish a written report of each such evaluation and transmit copies thereof to the Governor and the Legislature.

COMMENTS

In addition to the new authority contained in this section to construct and operate residential child caring facilities necessary to "round out" the statewide system authorized by Section 28, the language requires that whatever facilities are operated by the department must comply with the standards promulgated for the operation of facilities not operated by the department and that department operated facilities should be evaluated annually through an independent evaluation to be given wide distribution.

In the case of such facilities not operated by the department, the sanction provided for noncompliance with the promulgated standards is the suspension or revocation of the license of such facilities; the sanction with respect to

[12]Name of State licensing agency.

State-operated facilities is public opinion. This is a new device which seeks to avoid the anomalous situation where the standard of care and treatment in State-operated facilities can, with impunity, be maintained at a standard much lower than that in licensed facilities.

SECTION 32. LIMITATIONS OF PLACEMENT BY DEPARTMENT IN RESIDENTIAL CHILD CARING FACILITIES

The department shall not provide care and treatment in a residential child caring facility for a child whose legal custody is vested in the department as a neglected child or a child accepted for care on agreement in any such facility used for the provision of care and treatment to children found or alleged to be delinquent.

SECTION 33. STUDY OF CHILD AFTER COMMITMENT TO DEPARTMENT

The department shall, as soon as possible after the legal custody of a child is vested in it by the court, cause a study to be made of such child and an investigation to be conducted into all pertinent circumstances of the child's life and behavior, *Provided*, *That*, data concerning such child secured in any previous examinations and studies undertaken by the court or pursuant to the provisions of this (act) may, if sufficiently current, be utilized by the department in lieu of or in supplementation of a new examination and study of such child.

COMMENT

Where the program dealt with in these materials is to be administered by a State department administering other programs under which information received during the course of administering such other programs may not be used for any purpose other than the administration of such programs, a proviso along the following lines should be inserted to clarify the scope of the previously secured information which the department may utilize as part of the initial diagnosis:

"Provided Further, That this section shall not require any disclosure which would be inconsistent with the requirements of any Federal statutes under which grants are made to the State."

"Provided Further, That this section shall not require any disclosure which would be inconsistent with the requirements of (reference to appropriate statutes)."

SECTION 34. PERIODIC REVIEWS OF CASES OF CHILDREN COMMITTED TO DEPARTMENT

The department shall cause to be made periodic reviews of the case of each child whose legal custody is vested in the department. Such reviews shall:

(a) include a study of all pertinent circumstances of such child's personal and family situation and an evaluation of the progress made by such child since the previous study;

(b) be made for the purpose of ascertaining all relevant facts necessary to determine whether existing decisions, orders, and dispositions with respect to such child should be modified or continued in force;

(c) be conducted as frequently as the department deems necessary, but in any event, with respect to each such child, at intervals not to exceed (six) months; and

(d) a written summary of the findings and conclusions of the reviews shall be transmitted to the child's parent or guardian and to the committing court.

COMMENT

The court needs to be kept informed since it may receive inquiry regarding the child's progress and placement or petitions may be filed pursuant to sections 39 and 40 of this (act).

SECTION 35. VISITATION OF RESIDENTIAL CHILD CARING FACILITIES USED BY THE DEPARTMENT

Whenever the department places any child whose legal custody is vested in the department, or who is placed by agreement, in a residential child caring facility, other than a facility operated directly by the department, the department shall cause such residential child caring facility to be visited as often as necessary in order to

consult with and regarding such child, *Provided, That*, the department shall not place any such child in a residential child caring facility unless such facility shall agree that persons designated by the department, including parents, shall have such visitation rights and that it will report to the department as often as the department may require with respect to the condition of and the care and treatment accorded to such child.

SECTION 36. DETERMINATION OF TREATMENT FOR CHILD WHOSE LEGAL CUSTODY IS VESTED IN DEPARTMENT

With respect to a child whose legal custody has been vested in the department, the department on the basis of all available information concerning such child, shall:

(a) place such child—

(1) in such residential child caring facility within the State as is most suitable for the provision of needed care and treatment for such child; or

(2) where approved by the court and in accordance with the provisions of the Interstate Compact for Juveniles or the Interstate Compact on the Placement of Children, in a comparable facility in another State;

(b) following the placement of such child outside his own home, pursuant to the provisions of subsection (a) of this section, permit such child to return to his own home under supervision and upon such terms and conditions as the department believes to be necessary for a period not to exceed (3) months, *Provided, That*, the department shall promptly notify the court of the action taken under this subsection;

(c) notify, promptly and in writing, the parent or guardian of such child of each and every major treatment decision made in accordance with the provisions of this section.

COMMENT

This section does not provide for placing or permitting a child to remain in his own home directly following the vesting of the legal custody of such child in the department. The assumption is that legal custody would not have been removed from the child's parents unless care outside the home were needed. It is also recommended that a limit be placed upon the time that the department may continue to exercise legal custody over a child returned to his own home. Retention of legal custody in such situations is likely to be confusing to both the child and his parents. A maximum of three months is recommended for the continuation of this situation. During this period the parent is in effect an agent of the department exercising the department's powers of legal custody.

SECTION 37. LIMITATION OF AUTHORITY TO DELEGATE MAJOR TREATMENT DETERMINATIONS

All major treatment determinations pursuant to the provisions of subsections (a) and (b) of Section 36 of this (act) shall be made only by the Director of the Division of Preventive Services or the Division of Rehabilitative Services, or by their deputies, in consultation with appropriate treatment personnel.

SECTION 38. POWERS OF DEPARTMENT TO AUTHORIZE MEDICAL, PSYCHIATRIC, SURGICAL, OR DENTAL CARE—LIMITATIONS

With respect to any child whose legal custody is vested in the department:

(a) Except in case of emergency, the department shall not authorize or permit any major surgery to be performed upon or general anesthetic to be administered to such child unless specific written consent thereto shall first have been obtained from the parent or guardian of such child, or in the absence of such consent, from the court which vested legal custody of such child in the department;

(b) Upon the authorization of an attending physician, psychiatrist, surgeon, or dentist, the department may authorize the provision of such child of such other necessary medical, psychiatric, surgical, or dental care and treatment as may be required by such child, *Provided, That*, where the provision of such care and treatment is contrary to the religious tenets and beliefs of such child, the provision of such care and treatment to such child may be authorized by the department only upon the specific, written consent of the parent or guardian of such child, or, in the absence of such consent, upon the specific written order of the court which vested legal custody of such child in the department;

(c) When such child has been placed by the department in a residential child caring facility, other than one administered by the department, the person or persons administering such facility shall have the authority to authorize the provision to such child of necessary medical, psychiatric, surgical, or dental care only to the extent that such authority has been delegated to such person or persons with respect to particular children and subject to the same limitations as are applicable to the department under this (act).

(d) No child shall be subject to any research or experimentation, other than treatment authorized by this section, with the approval of the committing court and the parent or guardian of the child.

COMMENT

It is highly desirable that the statute set forth as clearly as possible the authority of the department to authorize medical, psychiatric, surgical and dental care for a child whose legal custody is vested in the department. The problem is real, not only in relation to the rights of the child and the child's parents but also in the light of the growing quantity of malpractice suits. A specific statutory provision could be of great assistance in obviating any possible confusion.

SECTION 39. PETITIONS FOR DEPARTMENTAL REVIEW

(a) Any child whose legal custody is vested in the department by the court, and the parent, guardian or custodian of such child, shall be informed of his right to petition the Secretary, in accordance with promulgated regulations, for a hearing with respect to:

(1) the failure to examine such child in accordance with the provisions of Section 33 of this (act);

(2) failure to review such child's situation within (six) months after a previous examination, in accordance with the provision of Section 34 of this (act);

(3) any treatment decision required to be made by the Director of the Division of Preventive or Rehabilitative Services or his Deputy pursuant to the provisions of Section 37 of this (act);

(4) a request to the Secretary for the issuance of an order taking such child into custody for alleged violations of the terms and conditions of such child's aftercare supervision, as provided in subsection (a)(1) of Section 41 of this (act);

(5) the taking of such child into custody for violations of the terms and conditions of his aftercare supervision as provided in subsection (a)(2) of Section 41 of this (act).

(b) The Secretary shall afford such child or his parent, guardian, or custodian an opportunity for a full and fair hearing upon such petition within (30) days and shall, at such hearing, give the child and his legal counsel, the parent, guardian, or custodian of such child, and their legal counsel, an opportunity to be heard and to present such information as may be deemed relevant and render a decision on the petition within (5) days after the conclusion of such hearing.

(c) Pending the determination by the Secretary with respect to a petition for review filed pursuant to the provisions of subsection (a) of this section, the authority of the department to take such action, in accordance with the provisions of this (act), with respect to such child, shall in no wise be affected.

SECTION 40. APPEALS TO COURT

(a) A child whose legal custody is vested in the department or his parents, guardian, or custodian shall have the right to appeal to the court:

(1) where the petition to the Secretary, as provided in Section 40 of this (act), has not been acted on or decided by the Secretary within the time specified in such section;

(2) where the child or his parents, guardian, or custodian feel aggrieved by any decision or order made by the Secretary pursuant to Section 40 of this (act);

(3) with respect to the taking of such child into custody for violation of the terms and conditions of his aftercare supervision as provided in subsections (a), (1) and (2) in Section 41 of this (act).

(b) Pending the determination by the court of such appeal, the authority of the department to take such action as it may deem necessary, in conformity with the provisions of this (act),

shall in no wise be affected, except to the extent ordered by the court.

SECTION 41. TAKING INTO CUSTODY AND DETAINING CHILD FOR FAILURE TO MEET TERMS AND CONDITIONS OF AFTERCARE SUPERVISION

(a) With respect to any child on aftercare supervision who, in the opinion of a designated employee of the department is in substantial violation of the terms and conditions of his release, such employee shall:

(1) notify the Director of the Division of Treatment Services in the case of a delinquent child, or the Director of Prevention Services if the child is neglected, of such alleged violation and if the Secretary, after an opportunity for a hearing as provided in Section 39 of this (act), issues a written order to such effect, take such child into custody and place him in such appropriate residential child caring facility as may be designated in such order, notifying the child, the child's parent, guardian, or custodian of their right to legal counsel and to appeal the issuance and execution of such order in accordance with the provisions of Section 40 of this (act);

(2) if such employee has reason to believe that permitting such child to remain in his own home would be dangerous to him or to the community or that such child is about to flee the jurisdiction of the court, take such child into custody and place him in an appropriate residential child caring facility or detention care facility if delinquent until determinations as to such child's further care and treatment are made by the department pursuant to Section 36 of this (act), *Provided*, *That*, such employee, at the time of taking such child into custody shall advise such child as to the specific terms and conditions of his release which he is alleged to have violated and of his right to legal counsel and to appeal in accordance with the provisions of Section 40 of this (act).

(b) When called upon by any designated employee of the department, all peace officers shall assist in taking a child into custody pursuant to the provisions of this section.

COMMENT

A distinction is made in this section with respect to those situations in which speedy action is required in taking the child into custody in order to protect him or the community and those where immediate action is not necessary.

In both cases the suggested language requires that there be a substantial violation by the child of the terms and conditions of aftercare supervision and grants the child the right to appeal to the court.

Throughout this section the attempt is made to balance necessities—the need for meaningful enforcement of the terms and conditions of aftercare supervision and the need for the child to be protected against arbitrary, capricious or petty enforcement of such terms and conditions which can become so onerous as to make the attainment of the objectives of release difficult.

Where there is no emergency (subsection (a)(1)), but it is determined that the terms and conditions are not being observed in a substantial fashion and that the child needs further care and treatment in a residential child caring facility, the decision should be made by the Secretary who has the responsibility for making basic treatment decisions.

On the other hand, where there is an emergency (subsection (a)(2)) because the child is endangering himself or the community, the employee of the department must move quickly and should be empowered to take, or authorize the taking, of such child into custody until such time as the court can determine what further treatment such child needs. The determination, in the first instance, that the terms and conditions of the child's release have been substantially violated should be made by a designated employee of the department and not by a peace officer.

SECTION 42. TAKING INTO CUSTODY AND DETAINING CHILD WHO HAS RUN AWAY FROM RESIDENTIAL CHILD CARING FACILITY

Any child:

(a) whose legal custody has been vested in the department; and

(b) who has been placed by the department in a residential child caring facility; and

(c) who has escaped or run away therefrom, may be taken into custody by an employee of the department of such residential child caring facility designated by the department without a

warrant or an order issued by the Director of the Division of Preventive Services or the Director of the Division of Treatment Services and detained in a suitable residential child caring facility or shelter or detention care facility until determinations as to such child's further care and treatment are made by the department pursuant to the provisions of Section 36 of this (act).

COMMENT

It should be noted that the authority for a peace officer to take into custody a child who has escaped or run away from a child caring facility is included in subsections (3), (4), (5) and (6) of Section 18 of PART I.

SECTION 43. CLOTHING, MONEY, TRANSPORTATION TO BE FURNISHED UPON RELEASE FROM RESIDENTIAL CHILD CARING FACILITY

The department shall, in accordance with regulations promulgated by it, insure that each child released by it from a residential child caring facility is furnished with suitable clothing, transportation to his home or to the place where a suitable residence or employment has been found for such child, and such an amount of money as may be determined to be necessary to facilitate such child's readjustment to living away from such residential child caring facility.

COMMENT

This section is broadly phrased so as to state only the objectives sought to be attained, with the details to be supplied by regulations.

It is intended to be applicable in all release situations—to the child returned to his own home under supervision, to the child placed in the community under supervision, or to a child released upon the termination of the department's legal custody of such child.

SECTION 44. PAYMENT OF WAGES FOR WORK PERFORMED IN RESIDENTIAL CHILD CARING FACILITY

The department may provide, in accordance with regulations promulgated by it, for the payment of reasonable wages for work performed by a child placed in a residential child caring facility while there housed and not part of a work release program under Section 45 of this (act), the sums so earned to be paid to or credited to the account of such child or paid to or on behalf of such child to the parent, guardian, custodian, or dependents of such child in such manner and in such proportions as the department may direct.

COMMENT

Under proper circumstances and with adequate safeguards, the payment of wages for work performed in a residential child caring facility can be an important factor in the treatment and rehabilitation of a child.

This provision is to be distinguished from that suggested in Section 46 relating to work release programs.

SECTION 45. ESTABLISHMENT OF WORK RELEASE PROGRAMS

(a) The department may, in accordance with regulations promulgated by it pursuant to this section, establish a work release program for children whose legal custody is vested in the department or who have been accepted for care on a voluntary basis by agreement and who are receiving care and treatment in a residential child caring facility.

(b) Under such a work release program, any such child may be authorized to secure or continue in suitable employment outside of such residential child caring facility and, unless otherwise authorized by the department with respect to specific cases, return to and remain in such facility during non-working hours.

(c) Employment under such work release program shall be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area, *Provided*, *That*, such employment shall not be permitted where there is a labor dispute involving the establishment in which such child is or is to be employed.

(d) It shall be the duty of the employer of a child participating in a work release program hereunder to transmit to the department the earnings of such child and such earnings shall

not be subject to levy by way of attachment or in any other lawful manner after receipt by such employer of a request by the department to transmit such earnings to it, *Provided*, *That*, the transmission to the department pursuant to this section, of the earnings of such child shall operate to discharge such employer from any further obligation to such child, except with respect to any taxes lawfully withheld from the wages of such child.

(e) The earnings transmitted to the department by a child's employer under a work release program shall be held to the account of such child, *Provided*, *That*, the department shall make payments from, and to the extent of, the earnings thus received as follows:

(1) to the account of the department, a reasonable amount to cover part of the costs of such child's care, treatment, and personal expenses, both inside and outside the residential child caring facility;

(2) to the dependents of such child for such amounts as the child is legally obligated to pay; and

(3) with the consent of such child, for the whole or part of any pre-existing debts of such child.

(f) The department may retain any balance remaining until the termination of the department's legal custody of such child.

COMMENT

This suggestion is modeled on the California law with certain revisions deemed necessary to clarify its intent and meaning. It should provide sufficient flexibility for the establishment of a work release program while retaining the safeguards which seem necessary to protect the child's working situation.

SECTION 46. TERMINATION OF DEPARTMENT'S LEGAL CUSTODY

Where the legal custody of a child is vested in the department and such custody has not been sooner terminated by the court, or by the department pursuant to the provisions of this section, the authority of the department to exercise legal custody over such child shall terminate:

(a) when such child reaches the age of 19 years, in which case the department shall:

(1) immediately notify such child of the termination of the department's legal custody of such child, and

(2) if care and treatment is being provided for such child in a residential child caring facility, release such child therefrom and facilitate his return to his own home, if the child so desires, or otherwise facilitate his reentry into the community.

(b) at the expiration of (12) months from the date on which legal custody was vested in the department or upon the expiration of any extension of such date sought and obtained by the department from the court prior to the expiration of such original date, in which case the department shall;

(1) immediately notify such child of the termination of the department's legal custody of such child,

(2) if care and treatment is being provided for such child in a residential child caring facility, release such child therefrom and facilitate his return to his own home, and

(3) notify the court of the action taken.

(c) at the expiration of (3) months after the department has placed such child in his own home, pursuant to the provisions of Section 36 of this (act), in which case the department shall notify the court of the action taken;

(d) when the department determines that the purposes of the order vesting legal custody over such child have been achieved, in which case the department shall;

(1) immediately notify such child of the termination of the department's legal custody of such child,

(2) if care and treatment is being provided for such child in a residential child caring facility, release such child therefrom and facilitate his return to his own home, and

(3) file with the court a notification of the department's action and recommend the issuance of such further orders by the court, with respect to such child as the department considers warranted.

COMMENT

The time specified in subsection (b) should be that specified by the Family Court Act[13] for the

[13] See PART I.

duration of a court order vesting legal custody in the department.

The time specified in subsection (c) should be that specified in Section 36.

This provision has two major objectives:

(1) certainty on the part of all parties involved as the exact status of the child at all times;

(2) adding an additional safeguard to insure that the child does not become "lost" in the system.

SECTION 47. ESTABLISHING AND MAINTAINING WRITTEN RECORDS

The department shall cause to be made and maintained full and complete written records of all studies and examinations, and of the conclusions and recommendations based thereon, and of all major decisions and orders concerning the disposition and treatment of every child with respect to whom the department provides, or arranges to have provided, care, treatment, and supervision pursuant to this (act).

COMMENT

Requirements along these lines are needed to reinforce previous sections of these materials dealing with treatment decisions and appeals from them. The right of appeal becomes an empty one when there is insufficient written basis for the decision from which an appeal is taken.

Similarly, provisions such as those contained in this section would act as another means of insuring that children will not become "lost" in the system.

It should be noted that the requirements of this section would apply to the records which must be kept by detention and shelter care facilities and residential child caring facilities, when such facilities are used by the department for providing care and treatment for a child.

This section would, of course, apply to the records which must be maintained by the department itself.

Requirements as to the records which must be kept by the court itself would appear in the laws relating to the court.

SECTION 48. RESTRICTIONS ON USE OF RECORDS

With respect to any child for whom care and treatment services are provided, directly or indirectly, by the department pursuant to this (act), it shall be unlawful, except for purposes directly connected with the administration of this (act) and in accordance with regulations promulgated by the department pursuant to this (act), or as in this (act) otherwise expressly provided, or upon the consent of such child or the attorney for such child, or upon the specific order of the court pursuant to the provisions of the Family Court Act,[14] for any individual agency, organization or facility knowingly to solicit, disclose, receive, or make use of, or authorize, permit, participate in, or acquiesce in the use of any information in or derived from such child's legal, social, medical, or psychological records, or obtained, directly or indirectly from the records, papers, files, or communication by or to the department or any individual, agency, organization, or facility utilized by the department for the provision of such care and treatment services for such child.

SECTION 49. TESTIMONIAL PRIVILEGE

Any person possessing information, the divulgence of which is prohibited or restricted under Section 48 of this (act), shall not be required to testify as to or produce any document containing such information in any court or other place except in accordance with the provisions of such section.

COMMENT

In seeking to confer a testimonial privilege upon those having information under this program, this section is very important.

SECTION 50. SEALING OR DESTRUCTION OF RECORDS

Where, pursuant to the provisions of the Family Court Act,[15] the records with respect to

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[14] Insert appropriate legislative references.

[15] Insert appropriate legislative references.

a particular child have been ordered sealed or destroyed, the department and any person, persons, agency, organization or facility included within the provisions of Section 48 of this (act) shall, upon inquiry regarding such child, reply that such child is not known to the department or to such person, persons, agency, organization, or facility.

COMMENT

Where authority is given to the court to seal or destroy records, a complementary provision such as this would be needed and should extend not only to the department but to all persons, agencies, organizations, and facilities utilized in the provision of care and treatment for a child at the request of the department. While it might create administrative difficulties in some types of residential child caring facilities, if the sealing or destroying provisions are to be meaningful a provision such as this one is needed.

SECTION 51. DUTY OF OTHER AGENCIES TO SUPPLY INFORMATION CONCERNING CHILD COMMITTED TO OR UNDER THE SUPERVISION OF DEPARTMENT

The police and school authorities and other public officials and agencies shall, upon the request of the department promptly make available to such department all pertinent information in their possession with respect to a child whose legal custody is vested in or who is under the supervision of the department or who has been accepted for care or supervision on a voluntary basis by agreement with the department pursuant to this (act) or the provisions of the Family Court Act.[16]

SECTION 52. GUARDIANSHIP OF THE PERSON OF A CHILD—DUTIES OF DEPARTMENT

If at any time while the legal custody of a child is vested in the department and prior to the final discharge of such child from such legal custody or while a child is under the supervision of the department pursuant to the provisions of the (Family Court Act)[17] or while a child is being provided services pursuant to the provisions of Section 14 and 15 of this (act), the department learns that such child for any reason does not have:

(a) a natural or adoptive parent in a position to exercise effective guardianship of such child; or

(b) a legally appointed guardian of his person, it shall be the duty of the department thereupon to file a petition in the appropriate court for the appointment of a guardian of the person of such child, *Provided*, *That*, no employee of the department shall accept appointment as the guardian of the person of such child.

COMMENT

Each child whose legal custody is vested in the department should have a private individual whether a natural or adoptive parent or a legally appointed guardian of his person—able to exercise effective guardianship. Such an individual would be expected to safeguard his rights, to have an interest in his well-being, and to serve him as a continued link with the community on a personal, individualized basis, ordinarily extending beyond the time that the legal custody of such child would be vested in the department.

To appreciate the full significance of this recommendation as a safeguard for the rights of the child, while at the same time permitting the effective operation of the department's program, this recommendation should be read, for example, in conjunction with Sections 36, 38 and 39 of this (act).

The department should be free to petition the court for the appointment of a guardian of the person of a child, with respect to whom it has certain responsibilities, even though such child has a parent living, when there are reasonable grounds to believe that the latter is not in a position to exercise effectively guardianship of the person functions.

In that connection, it is important to distinguish between the appointment of a guardian of the person of a child and termination of parental rights.

It is recommended that no officer or employee of the department become the guardian of the person of a child whose legal custody is vested in the department or over whom the

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[16] Insert appropriate legislative references.

[17] Insert appropriate legislative references.

department exercises supervision in order to avoid conflicts between the official duties imposed upon such officer or employee of the department and the loyalties involved in serving as the guardian of the person of such child.

The provisions of this section would not apply in the case of a child accepted by the department under an agreement with the Federal Government (see Section 10 of these materials), since legal custody in that situation would not be vested in the department but would remain in the appropriate Federal agency.

SECTION 53. TRANSFER OF FACILITIES TO DEPARTMENT

Effective on ( )[18] all rights, powers, responsibilities, and duties now exercised by the following agencies: ( )[19] pursuant to (citations of pertinent statutes) and all facilities, properties of every kind and nature, personnel, records, appropriations, funds, and all other resources available on such date to such agencies for the administration of such facilities shall be transferred to and shall thenceforth be vested and exercised by the department pursuant to the provision of this (act).

COMMENT

To give the department an opportunity to make the necessary arrangements to "take over" the administration of existing facilities which it does not already administer, the effective date of such transfer may be postponed for a period beyond the effective date of the remainder of the (act). See also the provisions of Section 65 of this (act).

The list of facilities would include only those facilities appropriate to the discharge of the responsibilities of the department under this suggested legislative language.

The provisions of this section would not be needed if the department is already responsible for the administration of all the facilities to be transferred.

There would seem to be no need for special provisions transferring to the department the legal custody of children where such legal custody has been vested in the named facilities to be transferred. The provisions of this section would transfer to the department all the powers and duties of those facilities, which would include those related to legal custody.

However, where, under existing statutes, legal custody of children has been vested directly in the individual in charge of a facility—for example, where the legal custody of children is vested in the superintendent of a training school—additional statutory language would be needed to effectuate the transfer of the powers and duties of such individual to the department.

SECTION 54. CONFINEMENT OF CHILD IN PENAL INSTITUTION PROHIBITED

No child whose legal custody is vested in the department shall be confined by the department in any facility used for the confinement or detention of persons accused or convicted of crime.

SECTION 55. RESPONSIBILITY OF DEPARTMENT WITH RESPECT TO MENTALLY ILL OR MENTALLY RETARDED CHILD

Whenever the department shall have reasonable ground to believe that a child whose legal custody has been vested in it is mentally ill or mentally retarded, the department shall:

(a) petition the court for a review and recision of the order vesting legal custody of such child in the department and for the initiation of proceedings for the adjudication of such child as mentally ill or mentally retarded in accordance with the provisions of ( );[20] and

(b) cause written notice of the filing of such petition to be served upon such child and upon the parent, guardian or custodian of such child.

COMMENT

A child whose legal custody is vested in the department should not be transferred solely at the discretion of the department to a facility for the care and treatment of mentally ill or mentally retarded children even for a limited

[18] Insert effective date.

[19] List names and locations of the facilities to be transferred.

[20] Insert appropriate legislative reference.

time, even though such transfer is solely for the purpose of diagnosis.

The basic decision of the court to transfer the legal custody of the child to the department was founded on a finding by the court that such child was delinquent or neglected. If the basis for the court's decision is to be changed, then it seems obvious that a re-evaluation of the decision should be made and should be made only by the court after affording the child and his parent or guardian an opportunity for a hearing on the matter.

SECTION 56. DUTY OF DEPARTMENT TO ACCEPT LEGAL CUSTODY OF OR EXERCISE SUPERVISION OVER CHILDREN

The department shall:

(a) accept legal custody of all children vested in it by the court pursuant to the (Family Court Act);[21] and

(b) exercise supervision, pursuant to this (act), over all children placed on probation or determined to be neglected by the court pursuant to the (Family Court Act).[21]

SECTION 57. REQUIRED CONSENT FOR PROVISION OF SERVICES—EXCEPTIONS

Nothing in this (act) shall be construed as authorizing any employee of the department to provide any services or care authorized under this (act) for or with respect to any child except:

(a) Upon the request or with the written consent of the parent, guardian, or custodian of such child, or of such child if emancipated, *Provided*, *That*, the consent include an agreement on the part of such parent, guardian, custodian or child to pay such part of the costs of care or service as it is determined such parent, guardian, custodian or emancipated child is financially able to pay;

(b) Where, pursuant to the request or consent provided for in subsection (a) of this section, the service is to provide care to a child outside such child's home, such care shall not exceed 6 months from the time the department began to provide such care unless the department petitions the court for legal custody, *Provided Further*, *That*, a child who has been placed by agreement outside of his own home shall be returned to his parents, guardian or other legal custodian within 24 hours excluding Sundays or holidays after a demand has been made for his return by the parent or guardian.

(c) Where such services are provided pursuant to an order of the court; or

(d) Where such services are provided pursuant to Sections 14 and 15 of this (act).

COMMENT

The disclaimer in the first part of this section is to obviate any question that employees of the department are authorized to force the acceptance of services other than in accordance with the provisions of this section.

It is presumed that where the court orders the provision of services, the court would make the appropriate provision for payment of the cost of providing such services.

The second proviso would be necessary to insure the fulfillment of parental responsibilities. There should be a review of the situation by the court after a reasonable time. All too many children are now virtually being abandoned by their parents until they are beyond the "adoptable" age. A mandatory review by the court therefore seems warranted.

SECTION 58. EMPLOYMENT BY DEPARTMENT OF PERSONS PREVIOUSLY CONVICTED OF CRIMES OR ON PROBATION, OR PAROLE

Notwithstanding any other provisions of laws or of regulations promulgated pursuant thereto, the department is authorized to employ in any appropriate capacity any person otherwise qualified even though such person has previously been convicted of a crime, whether or not pardoned therefor, or is on probation, aftercare supervision or parole and may direct such person to carry out such duties and functions at such places, and in association with such persons, as the department deems necessary or desirable notwithstanding the terms and conditions of such person's probation, aftercare supervision, or parole.

[21] Insert appropriate legislative reference.

COMMENT

In many instances departments are finding that persons who have themselves been "through the mill" can make valuable contributions to the prevention of delinquency and the care and treatment of delinquent children. Yet, because of the existence of restrictive provisions in State laws they are prevented from utilizing the services of such persons as public employees.

One of the basic tenets of any rehabilitative system should be that the individual should be judged on his merits alone and not on his record and past mistakes. Therefore, if a State seeks to achieve the fair consideration of an individual for employment on his own merits through such devices as making juvenile court records confidential or sealing them, it should, similarly, be in the forefront in itself employing persons whose sole employment disqualification is that they have "records" or are on probation, aftercare supervision, or parole.

SECTION 59. POWER OF DEPARTMENT TO ENFORCE AGREEMENTS

The department may bring an action in the appropriate court in its own name to enforce the terms of any agreement entered into pursuant to the provisions of Section 57 of this (act).

COMMENT

Where the functions provided for in this suggested legislative language are to be vested in an existing State department, such department may already possess these powers. On the other hand, in some States, authority to bring legal actions in the name of and on behalf of the State is vested exclusively in the Attorney General. In such States appropriate changes would have to be made in the language suggested.

SECTION 60. PROMULGATION OF REGULATIONS

The department is authorized to promulgate and enforce such regulations as may be necessary and appropriate for the proper accomplishment of the duties and functions vested in such department by law and which do not conflict with or exceed the provisions of law vesting such duties and functions in such department.

COMMENT

It should be noted that throughout these materials, certain powers vested in the department are to be exercised in accordance with regulations promulgated by the department.

This section contains suggested language for general authority to be vested in the department to issue such regulations. Where the functions and duties suggested in these materials are to be vested in an existing State department, that department may already have sufficient statutory authority to issue regulations governing its activities and this section would not be needed.

SECTION 61. AUTHORITY TO DELEGATE

All decisions authorized or required to be made by the department pursuant to the provisions of this (act), unless otherwise specifically limited to this (act), may, in accordance with regulations promulgated by the department, be delegated by the Secretary to any qualified employee of the department, or, in appropriate cases, to the official in charge of a licensed residential child caring facility or of a detention or shelter care facility.

SECTION 62. PUNISHMENT FOR UNLAWFUL ACTS

Whoever is convicted of the commission of an act made unlawful by this (act), and for which no other punishment is specially prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment for not more than ninety (90) days or by a fine of not more than one hundred (100) dollars, or by both such fine and imprisonment.

COMMENT

Where State statutes contain a general provision setting forth the extent of punishment for certain criminal acts for which no specific punishment is otherwise provided, this section would not be needed.

SECTION 63. CONSTRUCTION

This (act) shall be liberally construed so as to accomplish the purposes set forth in Section 1.

COMMENT

It is generally advisable to include a "construction" clause, especially where the legislation also contains a "purpose" clause.

If the "purpose" clause is clearly, accurately and concisely expressed, a "construction" clause can often be of assistance in securing an interpretation of other provisions of the (act) which will aid in the attainment of the legislative purposes.

A "construction" clause cannot, however, be used as a substitute for accuracy in legislative drafting.

Thus it cannot be argued that a legislative injunction for liberal construction, even when taken in conjunction with a "broad" purpose clause, would permit a court to interpret a specific provision contrary to its clearly expressed meaning.

SECTION 64. SEPARABILITY

If any provision of this (act), or the application thereof to any person, persons, circumstance, or circumstances is held invalid, the remainder of this (act) and the application of such provision to other persons or circumstances shall not be affected thereby.

COMMENT

It is generally considered advisable to include a "separability" clause when extensive revisions are made to existing statutory provisions. This is especially important where a wide variety of individuals in varying circumstances would be affected by the provisions enacted.

However, the inclusion of such a provision cannot serve as an absolute guarantee that the legislation, in its entirety, will not prove to be invalid or inoperable.

Thus, even if such a clause is included, if the application of the enactment to a particular set of circumstances or to a particular group of individuals is declared by the court to be invalid:

(a) the court may, in addition, find that the legislature intended that, if the provisions of the legislation could not apply to all circumstances and individuals, it should apply to none and hence all of its provisions are invalid; or

(b) the legislature, in enacting the legislation in question, may have intended such a totality of program that the declaration of a portion of it to be void would vitiate the legislative intent as to the type of program envisioned and bring about such an undesirable and distorted result that the immediate enactment of remedial legislation would be clearly indicated.

SECTION 65. EFFECTIVE DATE(S)

This (act) shall become effective upon its enactment, *Provided*, *That*, Sections_____ shall not become effective until (date) and *Provided Further*, *That*, . . .

Alternative:

This (act) shall become effective upon its enactment, *Provided*, *That*, Sections_____ shall not become effective until (the happening of a specific event), and *Provided Further*, *That*, . . .

COMMENT

In many States, the Constitution or laws, or both, govern the effective dates of statutory enactments and specify legislation can become effective upon enactment. Such requirements must, of course, be followed precisely.

Careful consideration should be given as to whether certain sections of the proposed legislation should not become effective until a date or dates later than the effective date of the remainder of the legislation.

Thus, such postponement of certain sections may be desirable or necessary when the legislation contains provisions for the transfer of functions from one agency to another. In such case, a delay in the effective date of certain provisions may be necessary so as to permit the orderly transfer of functions and personnel. Similarly, a delay may be in order where regulations must be promulgated and certain administrative actions taken in order to make operable newly enacted requirements, i.e., approval of certain facilities.

In the case of the transfer of functions from one agency to another, unless such transfer is

governed by existing statutes of general applicability, there will be need for the inclusion of specific provisions regarding the transfer of personnel from one agency to another, the rights, privileges, and status of such transferred personnel, etc. Similarly in such cases, specific provisions may also be needed with respect to the transfer of appropriated funds, real and personal property, etc.

Except where the proposed legislation deals with matters which are entirely new, there will be need for the inclusion in the proposed legislation of specific provisions dealing with transitional matters and transferred functions, i.e., the effectiveness of existing rules and regulations, pending civil and criminal litigation, continued validity of previously issued judicial orders and decrees and upon existing agency orders (i.e., aftercare supervision), obligation and authority for the "grandfather rights" of licensees, etc.

It is because of the many interim topics which should be considered and covered in the proposed legislation that the alternative is suggested above that certain sections not become operative until the happening of certain events.

The provisions of this section should be carefully coordinated with the second sentence of the suggested language for Section 66 dealing with "Repeal."

SECTION 66. REPEAL

Chapters____and____of the laws of_____ are hereby repealed. Effective____days after the effective date of this (act), Chapter____of the laws of_____shall be considered repealed.

COMMENT

It is important to specify the laws or parts of laws which are to be repealed and when such repeal is to be effective.

As a general drafting device, it is not recommended that the "repeal" clause consist merely of the statement that "all laws or parts of laws in conflict herewith are hereby repealed." This recommendation is made for two reasons:

(a) Unless the specific laws or parts of laws to be repealed are specified, the inclusion merely of such a flat statement is tantamount to leaving to the courts the determination as to which existing laws are in conflict with the newly enacted provisions. Even disregarding the fact that such a determination should be made by the legislative rather than the judicial branch of the government, such an unqualified statement is certain to lead to confusion in the administration of the newly enacted legislation. Until each possible interpretation of such legislation has been finally resolved by the courts—a process which could take years—there will remain doubt and confusion as to whether certain provisions of existing laws have been repealed or whether they should be construed in conjunction with the newly enacted legislation, possibly bringing about a result not intended by the legislature;

(b) Where the "repeal" clause requires specificity, it will also require an examination of existing statutes to determine which should be repealed, and—more important—which should be amended in the light of the newly enacted legislation. The legislature will therefore have before it the full picture not only of what it is enacting but also specifically of what it is repealing.

PART II

TITLE B

AN ACT AUTHORIZING

COMBINED STATE AND LOCAL PROGRAMS

for the

PREVENTION AND TREATMENT OF DELINQUENCY AND NEGLECT

NOTE

To avoid duplication, the texts of the suggested legislative language, and the notes and comments thereto, have not been repeated from Title A, which related to a wholly State-administered program, although the prefix "B" is used on the section numbers in this Title for easy reference.

THE SECTIONS SET FORTH HEREIN BEAR NUMBERS IDENTICAL, EXCEPT FOR THE LETTERED PREFIX, AND, IN CERTAIN INSTANCES, A LETTERED SUFFIX, TO THOSE OF TITLE A, TOGETHER WITH NOTATIONS AS TO WHETHER IT IS SUGGESTED THAT, FOR A PARTLY LOCALLY-ADMINISTERED PROGRAM, THEY REMAIN THE SAME, BE DELETED, BE CHANGED IN THE MANNER INDICATED, OR NEW SECTIONS BE ADDED.

UNLESS OTHERWISE NOTED, THE NOTES AND COMMENTS MADE WITH RESPECT TO THE SECTIONS OF TITLE A ARE ALSO APPLICABLE TO THE SECTIONS OF THIS TITLE.

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SECTION B-1. PURPOSE

No change suggested.

SECTION B-2. DEFINITIONS

Add after subsection (3) the following:

"( ) 'County Department' means the County Department charged with the responsibility of providing services for the prevention and treatment of neglect and delinquency."

Add immediately after above definition the following:

"( ) 'County Director' means the executive head of the County Department."

SECTION B-3. GENERAL DUTIES OF DEPARTMENT—PROGRAM DEVELOPMENT WITH RESPECT TO THE PREVENTION AND TREATMENT OF DELINQUENCY AND NEGLECT

No change suggested, but add the following new section:

SECTION B-3-a. GENERAL DUTIES OF COUNTY DEPARTMENT—PROGRAM DEVELOPMENT WITH RESPECT TO THE PREVENTION AND TREATMENT OF DELINQUENCY AND NEGLECT

With respect to programs for the prevention and treatment of juvenile delinquency, each County Department shall:

(a) Collect and evaluate statistics, information, and data relating to:

(1) the nature, extent, and causes of, and conditions contributing to, the delinquency of children;

(2) the existence and effectiveness of all such programs and the need for strengthening them or initiating new programs for such purposes;

(b) Encourage and assist in the development and conduct of innovative programs for the diversion of children from the juvenile justice system, to the extent that such diversion can be safely accomplished with due regard to the safety of the community and the well-being of the children involved, and for the provision to them of the care and services they need outside such system, to prevent children from becoming a part of or returning to such system;

(c) Adopt and implement the most effective means of making available to the public and to appropriate public and voluntary agencies and organizations throughout the County the information thus collected and evaluated;

(d) Enlist the participation of citizens' organizations, individual citizens, and representatives of local private and public agencies in the planning and development equally throughout the County of efficient, effective programs;

(e) Cooperate with and assist, within the scope of its functions and duties as provided by law, other public and voluntary agencies and organizations in the development and coordination of such programs;

(f) Promote and assist, to the maximum extent possible, in the development, expansion and operation of such programs as are community based.

SECTION B-4. DUTIES OF DEPARTMENT WITH RESPECT TO PROVISION OF TECHNICAL ASSISTANCE

No change suggested.

SECTION B-5. DUTIES OF DEPARTMENT WITH RESPECT TO RESEARCH

No change suggested.

SECTION B-6. DUTIES OF DEPARTMENT WITH RESPECT TO PERSONNEL TRAINING PROGRAMS

No change suggested, but add the following new section:

SECTION B-6-a. LEAVE FOR COUNTY PERSONNEL FOR TRAINING

With respect to any employee of the County Department selected to undergo training pursuant to the provisions of Section B-6 of this (act), the County Department may grant such employee leave to undertake such training and the continuation of the salary and other benefits to such employee.

SECTIONS B-7 through B-11, Inclusive

No change suggested.

SECTION B-12. ESTABLISHMENT OF OFFICE OF PREVENTION AND TREATMENT

Change to read:

SECTION B-12. ESTABLISHMENT OF OFFICE OF PREVENTION AND TREATMENT

There is hereby established in the department an Office of Prevention and Treatment which shall be under the supervisory control of a (Title) who shall be appointed by the Secretary in the same manner and who shall receive the same compensation as the (Titles) of the other (Offices) of the said department. The Office of Prevention and Treatment shall consist of at least a Division of Preventive Services and a Division of Treatment Services and such other divisions and organizational units as may from time to time be established. All employees of the Office of Prevention and Treatment shall be selected, appointed, promoted and compensated in accordance with the provisions of the (State Merit System). The Office of Prevention and Treatment shall be responsible for carrying out, or supervising the carrying out, of all the functions, duties and responsibilities vested in the department by this (act), by the (Family Court Act)[1] and as may be delegated to it by the Secretary.

Add the following new section:

SECTION B-12-a. ESTABLISHMENT OF COUNTY OFFICE OF PREVENTION AND TREATMENT

There is hereby established in the County Department an Office of Prevention and Treatment which shall be under the supervisory control of a (Title) who shall be appointed by the County Director in the same manner and who shall receive the same compensation as the (Titles) of other (Offices) of the said County Department. The County Office of Prevention and Treatment shall consist of at least a Division of Preventive Services and a Division of Treatment Services and such other Divisions and organizational units as may from time to time be established. All employees of the County Office of Prevention and Treatment shall be selected, appointed, promoted and compensated in accordance with the provisions of the (County Merit System). The County Office of Prevention and Treatment shall be responsible for carrying out all of the functions, duties and responsibilities vested in such County Office by this (act) with respect to such county, by the (Family Court Act)[2] and as may be delegated to it by the Department.

SECTION B-13. ESTABLISHMENT OF DIVISION OF PREVENTIVE SERVICES

Change to read:

SECTION B-13. ESTABLISHMENT OF DIVISION OF PREVENTIVE SERVICES

(a) There is hereby established in the Office of Prevention and Treatment a Division of Preventive Services which shall be under the direction of a Director of Preventive Services and which shall be responsible for carrying out, or supervising the carrying out of, all the functions, duties and responsibilities vested in the department by this (act), with respect to the prevention of delinquency and neglect, the treatment of neglect, and the diversion of children from the juvenile justice system, specifically including, but not limited to, the administration of the programs established by this section and established or to be established pursuant to the provisions of Section 14 and 15 of this (act).

(b) The Division of Preventive Services shall assume and exercise statewide responsibility and leadership in the development, organization, support and coordination of innovative programs, especially those that are community based, for the prevention of delinquency and neglect, the treatment of neglect and the diversion of children from the juvenile justice system.

(c) In carrying out the provisions of this section, the Division of Preventive Services shall enter into cooperative, continuing arrangements with other State and local public agencies and private nonprofit organizations providing or able

[1]Insert appropriate legislative references.

[2]Insert appropriate legislative references.

to provide welfare, education, health, mental health, recreation, job training, correction or other basic services in the community for children.

(d) In establishing, administering or supporting preventive programs under this (act), the Division of Preventive Services may provide for such needed services and programs through contracts or grants, or both.

Add the following new section:

SECTION B-13-a. ESTABLISHMENT OF COUNTY DIVISION OF PREVENTIVE SERVICES

There is hereby established in the County Office of Prevention and Treatment a Division of Preventive Services which shall be under the direction of a County Director of Preventive Services and which shall be responsible for carrying out, in the County, all the functions, duties and responsibilities vested in the County Department by this (act), by the (Family Court Act)[3] or delegated to the County Department by the department pursuant to the provisions of this (act) with respect to the prevention of delinquency or neglect, the treatment of neglect and alternative programs for children diverted from the juvenile justice system.

SECTIONS B-14 and B-15

No change suggested.

SECTION B-16. ESTABLISHMENT OF DIVISION OF TREATMENT SERVICES

Change to read:

SECTION B-16. ESTABLISHMENT OF DIVISION OF TREATMENT SERVICES

There is hereby established in the Office of Prevention and Treatment a Division of Treatment Services which shall be under the direction of a Director of Treatment Services and which shall be responsible for carrying out, or supervising the carrying out of, all functions, duties and responsibilities vested in the department with respect to the provision of care and treatment for children who are alleged to be or who are found to be delinquent.

Add the following new section:

SECTION B-16-a. ESTABLISHMENT OF COUNTY DIVISION OF TREATMENT SERVICES

There is hereby established in the County Office of Prevention and Treatment a County Division of Treatment Services which shall be under the direction of a County Director of Treatment Services and which shall be responsible for carrying out all the functions, duties and responsibilities in the County vested in or delegated to the County Department with respect to the provision of care and treatment for children who are alleged to be or who are found to be delinquent.

SECTION B-17. PROBATION SERVICES—DIRECTOR OF PROBATION—PROBATION OFFICERS—INTAKE BRANCH

No change suggested, but add the following new section:

SECTION B-17-a. STANDARDS GOVERNING FUNCTIONS, DUTIES AND RESPONSIBILITIES OF COUNTY OFFICE OF PREVENTION AND TREATMENT

All functions, duties and responsibilities, vested in or required to be performed by the County Office of Prevention and Treatment shall be carried out in accordance with standards issued by and regulations promulgated by the department.

SECTIONS B-18 through B-50, inclusive

No changes suggested.

SECTION B-51. INFORMATION FROM OTHER AGENCIES CONCERNING CHILD COMMITTED TO OR UNDER THE SUPERVISION OF DEPARTMENT

Change to read:

[3]Insert appropriate legislative references.

SECTION B-51. INFORMATION FROM OTHER AGENCIES CONCERNING CHILD COMMITTED TO OR UNDER THE SUPERVISION OF THE DEPARTMENT OR THE COUNTY DEPARTMENT

The police and school authorities and other public officials and agencies shall, upon the request of the department or the County Department, promptly make available all pertinent information in their possession with respect to a child whose legal custody is vested in the department or the County Department or who is under the supervision of the County Department pursuant to this (act) or the provisions of the (Family Court Act).[4]

SECTION B-52. GUARDIANSHIP OF THE PERSON OF A CHILD– DUTIES OF DEPARTMENT

Change "department" to "Department or County Department."

Change "Department" to County Department."

[4]Insert appropriate legislative references.

SECTIONS B-53 through B-55, inclusive

No change suggested.

SECTION 56. DUTY OF DEPARTMENT TO ACCEPT LEGAL CUSTODY OF OR EXERCISE SUPERVISION OVER CHILDREN

(a) the department or the County Department shall accept legal custody of all children vested in it by the court pursuant to the (Family Court Act).[5]

(b) the department or the County Department shall exercise supervision, pursuant to this (act) over all children placed on probation or determined to be neglected by the court pursuant to the (Family Court Act).[5]

SECTIONS B-57 through B-66, inclusive

No change suggested.

[5]Insert appropriate legislative references.